

No. 12775

United States
Court of Appeals
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

LLOYD A. FRY ROOFING CO.; VOLNEY
FELT MILLS, INC.; ST. JOHNS' MOTOR
EXPRESS CO.; BUILDING AND CON-
STRUCTION TRADES COUNCIL OF
PORTLAND AND VICINITY, AFL, and
MILLWRIGHTS AND MACHINE EREC-
TORS UNION, LOCAL No. 1857, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL,
Respondents.

Transcript of Record

Petition for Enforcement of Order of the
National Labor Relations Board

FILED

APR 10 1951

PAUL F. O'BRIEN

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America
 Before the National Labor Relations Board
 Case No. 36-CA-1

In the Matter of

LLOYD A. FRY ROOFING COMPANY, a Corporation; VOLNEY FELT MILLS, INC., a Corporation,

and

INTERNATIONAL ASSOCIATION OF MACHINISTS.

Case No. 36-CB-2

In the Matter of

BUILDING AND CONSTRUCTION TRADES COUNCIL OF PORTLAND AND VICINITY, AFL, a Labor Organization; MILLWRIGHTS AND MACHINE ERECTORS UNION, Local No. 1857, Chartered by United Brotherhood of Carpenters and Joiners of America, AFL, a Labor Organization,

and

INTERNATIONAL ASSOCIATION OF MACHINISTS.

COMPLAINT*

It Having Been Charged by International Association of Machinists that Llyod A. Fry Roofing

*Pleadings set out on pages 3 to 32 of this printed record are those portions of General Counsel's Exhibit No. 1 designated by Petitioner N.L.R.B. Received in evidence Nov. 9, 1951.

Company, a corporation, Volney Felt Mills, Inc., a corporation, St. Johns Motor Express Company, a corporation, each at Portland, Oregon, and that Building and Construction Trades Council of Portland and Vicinity, AFL, a labor organization, and Millwrights and Machine Erectors Union, Local No. 1857, chartered by the United Brotherhood of Carpenters and Joiners of America, AFL, a labor organization, each at Portland, Oregon, have engaged in and now are engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein referred to as the Act, the National Labor Relations Board, herein called the Board, acting through its General Counsel, and by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 5, Section 203.15, hereby issues this complaint and alleges as follows:

I.

Lloyd A. Fry Roofing Company, hereinafter referred to as respondent Fry, is and has been a corporation duly organized and existing by virtue of the laws of the State of Delaware, and is and has been licensed to engage in business in the State of Oregon.

II.

At all times herein mentioned, respondent Fry has maintained its principal office and place of business in Chicago, Illinois, and operates a plant at 3750 Northwest Yeon Avenue, Portland, Oregon,

where it has been and is now engaged in the manufacture, distribution, and sale of felt roofing.

III.

Respondent Fry, in the course and conduct of its business in Portland, Oregon, annually purchases materials and supplies valued in excess of \$500,000, of which more than 50 per cent is caused by it to be transported to its place of business in interstate commerce from states other than the State of Oregon, and annually sells and distributes its products valued in excess of \$1,000,000, of which more than 50 per cent is caused by it to be transported from its place of business in Oregon in interstate commerce to destinations in states other than in the State of Oregon.

IV.

Volney Felt Mills, Inc., hereinafter referred to as respondent Volney, is and has been a corporation duly organized by virtue of the laws of the State of Delaware, and is and has been licensed to engage in business in the State of Oregon.

V.

At all times herein mentioned, respondent Volney has maintained its principal office and place of business in Chicago, Illinois, and now operates a plant at 3750 Northwest Yeon Avenue, Portland, Oregon, where it is engaged in the manufacture, distribution and sale of roofing felt.

VI.

Respondent Volney, in the course and conduct of

its business at Portland, Oregon, annually purchases raw materials and supplies valued in excess of \$500,000, of which more than 50 per cent is caused by it to be transported to its place of business in interstate commerce from states other than the State of Oregon, and annually sells and distributes its products valued in excess of \$1,000,000, of which more than 50 per cent is caused by it to be transported from its place of business in Oregon in interstate commerce to destinations in states other than in the State of Oregon.

VII.

St. Johns Motor Express Company, hereinafter referred to as respondent St. Johns is and has been a corporation duly organized and existing by virtue of the laws of the State of Oregon.

VIII.

At all times herein mentioned, respondent St. Johns has maintained its principal office and place of business at 7220 North Burlington Avenue, Portland, Oregon, and has been and is now engaged in transportation of freight by motor vehicle and in the installation of industrial machinery.

IX.

Respondent St. Johns, in the course and conduct of its business at Portland, Oregon, annually renders services in installing industrial machinery and as a motor carrier valued in excess of \$1,000,000, of which more than 60 per cent are services performed

in interstate commerce to and from states other than the State of Oregon.

X.

International Association of Machinists, hereinafter referred to as the Machinists, and Willamette Lodge No. 63, affiliated with the International Association of Machinists, hereinafter referred to as Lodge No. 63, and Building and Construction Trades Council of Portland and Vicinity, affiliated with the American Federation of Labor, hereinafter referred to as respondent Council, and Millwrights and Machine Erectors Union, Local No. 1857, chartered by the United Brotherhood of Carpenters and Joiners of America, AFL, hereinafter referred to as respondent Millwrights, each is a labor organization within the meaning of Section 2(5) of the Act.

XI.

On or about August 22, 1947, respondent St. Johns entered into a contract with the respondents Fry and Volney wherein respondent St. Johns undertook to install certain machinery and equipment for the respondents Fry and Volney in a building then being constructed by them for their use, and by said contract there was reserved to the respondents Fry and Volney complete supervision, control, and responsibility in relation to accomplishing the work to be done by respondent St. Johns under said contract.

XII.

On or about August 26, 1947, the respondents Fry, Volney, and St. Johns employed R. E. Baker, Fred

Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel and assigned said employees to work in accomplishing the work to be done in performance of the contract referred to in paragraph XI.

XIII.

On or about August 29, 1947, the respondents Council and Millwrights requested the respondent Fry, Volney, and St. Johns to discharge the employees named in paragraph XII and replace them with employees who were members of respondent Millwrights, and then threatened to use economic sanctions against the respondents Fry, Volney, and St. Johns, if said respondents did not discharge said employees.

XIV.

On or about September 2, 1947, respondents Fry, Volney and St. Johns discharged said employees named in paragraph XII, pursuant to the request and under compulsion of the threat made by the respondents Council and Millwrights described in paragraph XIII.

XV.

Since the date referred to in paragraph XIV, the respondents Fry, Volney, and St. Johns have failed to, refused to, and continue to refuse to reinstate said employees named in paragraph XII to their former or substantially equivalent positions of employment.

XVI.

Respondents Council and Millwrights did request the discharge of said employees named in para-

graph XII, and did threaten to use economic sanctions against the respondents Fry, Volney, and St. Johns in the manner stated in paragraph XIII, and did cause the discharge of said employees in the manner stated in paragraph XIV, for the reason that said employees were members of Lodge No. 63 and were not members of the Millwrights.

XVII.

Respondents Fry, Volney, and St. Johns did discharge and thereafter failed or refused to reinstate the said employees named in paragraph XII, in the manner stated in paragraph XIV, for the reason that said employees were members of Lodge No. 63 and were not members of the Millwrights.

XVIII.

By the acts described above in paragraphs XIV and XV, and for the reasons set forth in paragraph XVII, the respondents Fry, Volney and St. Johns have discriminated and are discriminating in regard to the hire and tenure of employment of the said employees named in paragraph XII, and have discouraged and are discouraging membership in Lodge No. 63 and in the Machinists, and have encouraged and are encouraging membership in the Millwrights and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a)(3) of the Act.

XIX

By the acts described in paragraphs XIII, and for the reasons set forth in paragraph XVI, the

respondents Council and Millwrights have attempted to cause and did cause the respondents Fry, Volney and St. Johns, as the employer of the employees named in paragraph XII, to discriminate against said employees in regard to the hire and tenure of employment of said employees to discourage membership in Lodge No. 63 and in the Machinists and to encourage membership in the Millwrights in violation of Section 8(a)(3) of the Act, and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

XX.

By the acts and conduct set forth in paragraphs XIII to XIX, inclusive, and by each acting in concert with the others in the conduct set forth therein, the respondents Fry, Volney and St. Johns, and the respondents Council and Millwrights have restrained and coerced, and are restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby the respondents, Fry, Volney, and St. Johns have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, and the respondents Council and Millwrights have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(1) of the Act.

XXI.

The acts and conduct of the respondents Fry, Volney and St. Johns, and the respondents Council and Millwrights as set forth in paragraphs XIII to

XX, inclusive, occurring in connection with the operations of the respondents Fry, Volney, and St. Johns, described above in paragraphs II, III, V, VI, VIII, and IX, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states in the United States, and tend to lead to labor disputes which burden and obstruct the free flow of commerce.

XXII.

The acts and conduct of the respondents Fry, Volney and St. Johns, and the respondents Council and Millwrights described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a) (1) and (3), and 8 (b) (1) and (2), and Section 2 (6) and (7) of the Act.

Wherefore, the Board, acting through its General Counsel, by the Regional Director of the Nineteenth Region, on behalf of the Board, on this 30th day of June, 1948, issues this complaint against Lloyd A. Fry Roofing Company, and Volney Felt Mills, Inc., and St. Johns Motor Express Company, and Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwrights and Machine Erectors Union, Local 1857, chartered by the United Brotherhood of Carpenters and Joiners of America, AFL, respondents herein.

[Seal] /s/ THOMAS P. GRAHAM, JR.,
Regional Director, 19th Region, National Labor Relations Board.

[Title of Board and Cause.]

ORDER

Appropriate Motion having been made by respondent Building and Construction Trades Council of Portland and Vicinity, AFL, and for good cause shown;

It Is Hereby ordered that the time for filing answer herein by Building and Construction Trades Council of Portland and Vicinity, AFL, is hereby extended to the 26th day of July, 1948.

Dated at Seattle, Washington, this 13th day of July, 1948.

[Seal] /s/ THOMAS P. GRAHAM, JR.,
Regional Director, National
Labor Relations Board.

Affidavit of Service by Mail and return receipts attached.

[Title of Board and Cause.]

AMENDED ANSWER OF RESPONDENT, ST.
JOHNS MOTOR EXPRESS COMPANY

The respondent, St. Johns Motor Express Company, a corporation, herewith files an Amended Answer to the Complaint in the above-captioned cases, and therein admits, denies and alleges as follows:

I.

Has no knowledge to form a belief and therefore denies the allegations in Paragraph I.

II.

Admits the allegations contained in Paragraph II.

III.

Has no knowledge to form a belief and therefore denies the allegations contained in Paragraphs III and IV.

IV.

Admits the allegations contained in Paragraph V.

V.

Has no knowledge to form a belief and therefore denies the allegations contained in Paragraph VI.

VI.

Admits the allegations contained in Paragraphs VII, VIII, IX, and X.

VII.

Admits the allegations contained in Paragraphs XI and XII and alleges that such action was taken in conformity with the provisions of the contract mentioned in Paragraph XI; that such action was specifically ordered of respondent St. Johns Motor Express Company by respondents Fry and Volney under the terms of said contract, and that the Answer of any other respondent herein which is contrary in any particular to these allegations is categorically denied by the respondent St. Johns Motor Express Company.

VIII.

Admits the allegations contained in Paragraphs XIII, XIV, XV, XVI and XVII.

IX.

Denies the allegations concerning respondent St. Johns Motor Express Company contained in Paragraph XVIII, because the acts of said respondent were done under specific instructions of respondents Fry and Volney, and that such acts were done only as the agent of the principals Fry and Volney.

X.

Denies the allegations contained in Paragraphs XIX and XX.

XI.

Denies the allegations contained in Paragraphs XXI and XXII.

Wherefore, the respondent St. Johns Motor Express Company, having answered the Complaint herein, requests that the National Labor Relations Board find that said respondent has not been guilty of an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) of the Labor-Management Relations Act of 1947, and that this action be dismissed with regard to said respondent St. Johns Motor Express Company.

SCUDDER & LONG,

Attorneys for Respondent St. Johns Motor Express Company.

Received October 11, 1948. N.L.R.B.

[Title of Board and Cause.]

ANSWER OF RESPONDENTS LLOYD A. FRY
ROOFING COMPANY AND VOLNEY
FELT MILLS, INC.

Respondents Lloyd A. Fry Roofing Company, a corporation, and Volney Felt Mills, Inc., a corporation, in answer to the complaint herein, admit, deny and allege as follows:

I.

Admit Paragraphs I, II, IV, V, VII and VIII.

II.

Admit the allegations of Paragraphs III and VI but specifically deny that any of the work being done at the time and place specified in the complaint affected commerce.

III.

Do not have knowledge sufficient to form a belief and therefore deny the allegations contained in paragraph IX.

IV.

Admit Paragraphs X and XI.

V.

Deny the allegations contained in Paragraphs XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI and XXII of the complaint.

And for a further and separate answer and defense to the complaint, respondents allege as follows:

I.

That at all times hereinafter mentioned, the Building and Construction Trades Council of Portland and Vicinity, AFL, was and is a labor organization within the meaning of the National Labor Relations Act, as amended; that at the times and place hereinafter mentioned, the Millwrights and Machine Erectors Union, Local No. 1857, chartered by United Brotherhood of Carpenters and Joiners of America, AFL, was a labor organization, and that the International Association of Machinists, and the Willamette Lodge No. 63, affiliated with the International Association of Machinists was and is a labor organization within the meaning of the National Labor Relations Act of 1947.

II.

On or about the 21st day of February, 1947, respondents Fry and Volney entered into a contract with respondent Building and Construction Trades Council of Portland pursuant to which it was agreed that all work to be performed in the erection of a building to be located in the city of Portland, Oregon, and the installation of machinery therein was to be performed by members of unions affiliated with respondent Building and Construction Trades Council. Subsequent to said time said contract was confirmed and ratified in writing by R. R. Lautermilch, agent and representative of these respondents.

III.

Thereafter, and on and between about the 22nd

day of August, 1947, and about the 26th day of August, 1947, respondents Fry and Volney entered into a contract with respondent St. Johns for the installation in the building above mentioned of certain machinery and equipment as described in Paragraph XI of the complaint, and in connection therewith it was agreed that pursuant to and in compliance with the contract described in Paragraph II of these respondents' separate answer and defense respondent St. Johns would employ only A. F. of L. employees affiliated with said Building and Construction Trades Council.

IV.

Pursuant to said agreement respondent St. Johns employed the men named in Paragraph XII of the complaint, all of whom these answering respondents assumed and believed were workmen in good standing and affiliated with said Building and Construction Trades Council and the A. F. of L. and respondents were led to believe by the conduct of said employees and their representative that they were so affiliated. The workmen above mentioned were in fact members of Willamette Lodge No. 63, affiliated with the International Association of Machinists and not affiliated with the Council above mentioned or the A. F. of L. and, upon being so informed, respondents by reason of their obligations and commitments pursuant to the contract above mentioned acquiesced in the discharge of said employees by respondent St. Johns and they accordingly were discharged on or about September 2, 1947, and in accordance with the terms of the contract above men-

tioned said employees were replaced with workmen who were affiliated with said Council.

V.

Respondents at no time have undertaken to discriminate against said employees or discourage membership in Lodge No. 63 or any other Union, but have endeavored in good faith to carry out their commitments as aforesaid. The matters complained of herein have arisen solely because of a jurisdictional controversy existing between the International Association of Machinists and the Building and Construction Trades Council of Portland and Vicinity, coupled with the deception above mentioned on the part of said employees and their representative in regard to the fact of their non-affiliation with said Council and A. F. of L. being not disclosed at the time of their hiring and during the course of their employment.

VI.

Respondents further allege that the discharges of the workmen named in Paragraph XII of the complaint were made pursuant to and by virtue of said respondents' obligations under a valid closed-shop contract which was in existence prior to the effective date of the Labor Management Relations Act of 1947, and respondents further allege that in the event they were not thereby protected and justified in doing the acts complained of the discharges were made necessary and were forced upon them by respondents Building and Construction Trades Council and Millwrights under threat of economic

sanctions and removal of all A. F. of L. workmen from the construction project of these respondents.

Wherefore, respondents, Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., having answered the Complaint herein, request that the National Labor Relations Board find that said respondents, and each of them, have not been guilty of any unfair labor practice affecting commerce within the meaning of Section 8 of the Labor Management Relations Act of 1947 and that this proceeding be dismissed as to these respondents.

/s/ HUGH L. BARZEE,

Attorney for Respondents, Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc.

State of Oregon,
County of Multnomah—ss.

I, B. B. Alexander, being first duly sworn, say that I am the Portland Manager of Lloyd A. Fry Roofing Company, a corporation, and Volney Felt Mills, Inc., a corporation, the above-named Respondents, that I have read the foregoing Answer and that the same is true as I verily believe.

/s/ B. B. ALEXANDER.

Subscribed and sworn to before me this 29th day of October, 1948.

[Seal] /s/ H. L. BARZEE,

Notary Public for Oregon.

My Commission expires September 28, 1951.

Affidavit of Service by Mail attached.

Received Nov. 1, 1948. N.L.R.B.

[Title of Board and Cause.]

ANSWER OF BUILDING AND CONSTRUCTION TRADES COUNCIL OF PORTLAND AND VICINITY, AFL, ETC.

Come now the respondents, Building and Construction Trades Council of Portland and Vicinity, AFL, a labor organization, and Millwrights and Machine Erectors Union, Local No. 1857, chartered by United Brotherhood of Carpenters and Joiners of America, AFL, a labor organization, and, in answer to the Complaint in the above-captioned case, admit, deny and allege as follows:

I.

Admit Paragraphs I, II, IV, V, VII and VIII.

II.

These respondents have no information sufficient to form a belief, and therefore deny the allegations in Paragraphs III, VI and IX.

III.

Admit Paragraph X.

IV.

Admit Paragraph XI.

V.

These respondents have no information sufficient to form a belief, and therefore deny the allegations in Paragraph XII.

VI.

Deny Paragraphs XIII, XIV, XV and XVI.

VII.

These respondents have no information sufficient to form a belief, and therefore deny the allegations in Paragraphs XVII and XVIII.

VIII.

Deny Paragraphs XIX, XX, XXI and XXII.

For a first, further and separate answer to the Complaint, these respondents allege as follows:

I.

That at all times hereinafter mentioned, the Building and Construction Trades Council of Portland and Vicinity, AFL, was and is a labor organization within the meaning of the National Labor Relations Act, as amended; that at the time and place hereinafter mentioned, the Millwrights and Machine Erectors Union, Local No. 1857, chartered by United Brotherhood of Carpenters and Joiners of America, AFL, was a labor organization, and that the International Association of Machinists, and the Willamette Lodge No. 63, affiliated with the International Association of Machinists, was and is a labor organization within the meaning of the National Labor Relations Act of 1947.

II.

That on or about the 21st day of February, 1947, and on the 7th day of March, 1947, the Fry Roofing Company, respondent referred to in plaintiff's Complaint, entered into a contract with these respondents in which it was agreed that all work to be performed in the erection of a building and in the installation of machinery in said building, referred

to in the Complaint, was to be performed by members of unions affiliated with the Building and Construction Trades Council of Portland and Vicinity, and under the wage scale of the said Building and Construction Trades Council; that the Millwrights Union, referred to above, was a labor organization affiliated with the said Building and Construction Trades Council; that the said agreement provided among other things, that the Fry Roofing Company or any sub-contractor to whom they sublet the work, would only employ workmen in good standing with unions affiliated with the Building and Construction Trades Council of Portland and Vicinity; that on or about the 26th day of August, 1947, these respondents received information that the Fry Roofing Company, in violation of its contract above described, was employing men to do the particular job in Portland, Oregon, who were not members of the unions affiliated with the said Building and Construction Trades Council, and particularly were not members of the Millwrights and Machine Erectors Union, Local No. 1857; that these respondents thereupon notified the respondent, Fry Roofing Company and the St. Johns Motor Express Company, that they had such a contract and were insisting that the contract be fulfilled; that these respondents specifically deny that they used coercion of any kind on the other respondents or parties to these proceedings or on any of the individuals set forth in Paragraph XII of the Complaint, but instead were only insisting that Fry Roofing Company and St. Johns Motor Express Company comply with the agreement above set forth.

For a second further and separate answer to the Complaint, these respondents allege as follows:

I.

Re-allege all the allegations contained in Paragraph I of respondents' first, further and separate answer to the Complaint and the whole thereof.

II.

These respondents are informed and believe and therefore allege that, sometime between the 22nd day of August, 1947, and the first part of September, 1947, the exact date of which is unknown to these answering respondents, respondent St. Johns Motor Express Company entered into an oral agreement with Machinists Local No. 63, affiliated with the International Association of Machinists, whereby it was agreed that the respondent, St. Johns Motor Express Company, would employ exclusively members of Machinists Local No. 63 to perform the work referred to in the Complaint; that said agreement was in direct violation of the National Labor Relations Act of 1947, as amended, Sections 8A-(1), 8A-(3), 8B-(1) and 8B-(2) thereof, and that pursuant to such illegal contract, the individuals named in Paragraph XII of the Complaint, all of whom were members of Machinists Local No. 63, were employed and maintained their employment solely because of their membership in said Local No. 63.

III.

These respondents are further informed and believe and therefore allege that the respondent, St. Johns Motor Express Company, with the approval,

consent and assistance of Machinists Local No. 63, employed said members on the 26th day of August, 1947, and that said employment was made and maintained on the basis that the individuals were members of the said Local; that these employees named obtained and maintained their employment, all in violation of the National Labor Relations Act of 1947, as amended, Sections 8A-(1), 8A-(3), 8B-(1) and 8B-(2) thereof.

IV.

That if the Board has jurisdiction over the subject matter, the employees named in Paragraph XII of the Complaint, achieved their status as employees through illegal acts, methods, practices and agreements which they consented to, and which acts were directly done and performed by the charging Union, Machinists International Association, Local No. 63, and the respondent, St. Johns Motor Express Company, and therefore the said charging Union or the individuals named in said Complaint, cannot obtain any relief of any kind or description whatsoever before this or any other tribunal because of the acts set forth in Paragraphs II and III of respondents' second further and separate answer, set forth above.

Wherefore these respondents, having fully answered the Complaint, respectfully pray for an order of the Board dismissing said Complaint.

/s/ GREEN, LANDYE &
PETERSON,

Attorneys for Respondents, Building and Construction Trades Council of Portland and Vicinity,

AFL, and Millwrights and Machine Erectors Union, Local No. 1857, chartered by United Brotherhood of Carpenters and Joiners of America, AFL.

State of Oregon,
County of Multnomah—ss.

I, Fred Manash, Labor Temple, Portland, Oregon, being first duly sworn, depose and say: that I am an officer of one of the respondents in the above-entitled case and that the foregoing Answer is true as I verily believe.

/s/ FRED MANASH.

Subscribed and sworn to before me, a notary public, on this, the 28th day of October.

[Seal] /s/ JAMES LANDYE,
Notary Public for Oregon.

My Commission expires Dec. 7, 1951.

For a third further and separate answer to the Complaint, these respondents allege as follows:

I.

Re-allege all the allegations contained in Paragraph I of respondent's first further and separate answer to the Complaint and the whole thereof.

II.

These respondents allege that Section 8B-(1) and 8B-(2) of the National Labor Relations Act of 1947 as amended and as it has attempted to be applied to these respondents as set forth in the Complaint

herein, is void for the reason that the same is unconstitutional on the ground that it violates the Thirteenth Amendment of the Constitution of the United States of America, and it violates Amendment No. 1 to the Constitution of the United States of America, and if applied as set forth in the Complaint filed in this proceeding, would deny these respondents the right of free speech, free press and assemblage, and that the said Section 8B-(1) and Section 8B-(2) if applied as set forth in said Complaint in this cause would violate the Fifth Amendment to the Constitution of the United States in that these respondents would be deprived of a right to enforce a property right—to wit, a valid and subsisting contract, which contract is specifically referred to and set forth in the first further and separate answer to the Complaint, and that these respondents would be deprived of property without due process of law.

Wherefore these respondents, having fully answered the Complaint, respectfully pray for an order of the Board dismissing said Complaint.

/s/ GREEN, LANDYE &
PETERSON,

Attorneys for Respondents, Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwrights and Machine Erectors Union, Local No. 1857, chartered by United Brotherhood of Carpenters and Joiners of America, AFL.

Affidavit of Service by Mail attached.

Received Nov. 1, 1948. N.L.R.B.

Before the National Labor Relations Board
Nineteenth Region

Case No. 36-CA-1

In the Matter of

LLOYD A. FRY ROOFING COMPANY, a Corporation; VOLNEY FELT MILLS, INC., a Corporation; ST. JOHNS MOTOR EXPRESS COMPANY, a Corporation.

and

INTERNATIONAL ASSOCIATION OF MACHINISTS.

Case No. 36-CB-2

In the Matter of

BUILDING AND CONSTRUCTION TRADES COUNCIL OF PORTLAND AND VICINITY, AFL, a Labor Organization; MILLWRIGHTS AND MACHINE ERECTORS UNION, Local No. 1857, Chartered by United Brotherhood of Carpenters and Joiners of America, AFL, a Labor Organization,

and

INTERNATIONAL ASSOCIATION OF MACHINISTS.

Tuesday, November 9, 1948

Pursuant to notice, the above-entitled matter came on for hearing at 2:30 p.m.

Before: Peter F. Ward, Trial Examiner.

Appearances:

MELTON BOYD,

Seattle, Washington,

Appearing for the National Labor Relations Board.

E. J. EAGEN,

Seattle, Washington,

Appearing for the Petitioner, International Association of Machinists.

JAMES LANDYE,

Corbett Building, Portland, Oregon,

Appearing for Respondent Building Trades, and Local No. 1857; also for Fred Manash, Secretary of the Building Trades.

WILFORD C. LONG,

Pittock Block, Portland, Oregon,

Appearing for Respondent St. Johns Motor Express Company.

HUGH L. BARZEE,

Pacific Building, Portland, Oregon,

Appearing for Respondent Lloyd A. Fry and Volney Felt Mills, Inc.

PROCEEDINGS

Mr. Boyd: The General Counsel at this time asks that the court reporter shall note that which has been marked for identification General Counsel's Exhibit No. 1, being the formal pleadings in this case which the General Counsel at this time, after examination by other Counsel to this proceeding, will offer in the record. As a matter of explanation to you, because it is voluminous, on the righthand side of this folder are the pleadings themselves; on the lefthand side of the folder are affidavits, motions, and orders.

Mr. Barzee: No objection.

Mr. Landye: No objection.

Mr. Long: No objection. [8*]

Mr. Eagen: No objection.

Trial Examiner Ward: General Counsel's exhibit number one will be received in evidence.

(Whereupon, Exhibit No. 1, having previously been marked for identification, was received in evidence.)

* * *

Mr. Boyd: Further addressing myself to the pleadings [9] now admitted in evidence and in this record, I move that the matters contained as the second and further separate answer of the respondents Construction Trades Council of Portland and Vicinity and Millwrights and Machine Erectors Union, who now—and in all subsequent references I will use the expression “The Council and the

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Millwrights," as that expression has been used in the pleadings—that that second and further separate answer contained in paragraphs number Roman one, two, three, and four appearing on pages four and five of the answer filed by the respondents, Council and Millwrights, be stricken.

Mr. Long: Mr. Examiner, as attorney for the respondent St. Johns Motor Express we desire to join in the motion and for like reasons as expressed by Mr. Boyd.

Trial Examiner Ward: Join in the motion to strike?

Mr. Long: Correct.

Mr. Eagen: The machinists desire to join in the motion to strike as affirmative defense.

Trial Examiner Ward: Council and Millwrights, do they join in the motion?

Mr. Landye: Beg pardon, sir?

Trial Examiner Ward: That was an unnecessary statement of the Examiner. I just wondered if everybody was going to join in the motion.

Mr. Landye: Counsel for the Building Trades Council will [10] not join.

Mr. Barzee: Neither will Counsel for Fry and Volney.

Trial Examiner Ward: Let me see that. The Examiner read the pleadings during the recess. The last case the Examiner heard before coming out to the northwest was in New York. I had a similar proposition there. The motion will be granted. Inasmuch as the Examiner has no jurisdiction to hear any charge that has not been investigated, or per-

mitted to be filed by the General Counsel's offices, it's beyond the scope of the jurisdiction of the Examiner to hear. [11]

* * *

Mr. Boyd: If the Examiner please, there is among the formal documents in the formal file the order of the Regional Director of the National Labor Relations Board issued October 27, 1948, directing the taking of depositions of witnesses in Chicago, namely, R. R. Lautermilch and J. R. Baker and Lloyd A. Fry. Pursuant to that order, the depositions of Lautermilch and Baker were taken in Chicago. The application having been made by the respondents Fry and Volney, it was decided by Counsel for those respondents in Chicago not to [25] call as a witness Lloyd A. Fry. Subsequent to the taking of the depositions a transcript was made of the testimony of these witnesses which has been signed by them, that is Lautermilch and Baker, and these depositions have been filed with the Regional Director of the Ninteenth Labor Relations Board who has directed me to transmit them to you as the Trial Examiner in this case. At this time, that which is marked on the outside as—on the second page, correction, on the second page as the deposition taken pursuant to this order referred to, is now tendered to the Trial Examiner. It is tendered to the Trial Examiner subject to the objections urged by the General Counsel to certain questions and answers propounded by the respondent's Counsel and the witnesses called by the respondent, as those

objections are found, or noted in the transcript of the testimony of the respondents on pages 8, 10, 17, 28, and 33.

Trial Examiner Ward: It is your purpose to introduce the depositions taken at this stage of the proceedings?

Mr. Boyd: It is, Mr. Examiner. Whether the Examiner desires at this stage of the proceedings to rule on the objections made at that time is another matter, but it is now filed with the Regional office as a part of the formal papers.

Trial Examiner Ward: I think we will give it General Counsel's number two. [26]

Mr. Boyd: You may do so so far as the numbering is concerned, but the record discloses that the depositions were taken at the request of the respondents Fry and Volney.

Trial Examiner Ward: Very well; I understand that. We will give it a number, General Counsel's number two and received under the condition as stated by the General Counsel.

(Whereupon, the document referred to was marked General Counsel's Exhibit No. 2 for identification and received in evidence.) [27]

* * *

GENERAL COUNSEL'S EXHIBIT No. 2
United States of America

Before the National Labor Relations Board
Nineteenth Region
Case No. 36-CA-1

In the Matter of

LLOYD A. FRY ROOFING COMPANY, a Corporation; VOLNEY FELT MILLS, INC., a Corporation; ST. JOHNS MOTOR EXPRESS COMPANY, a Corporation,

and

INTERNATIONAL ASSOCIATION OF MACHINISTS.

Case No. 36-CB-2

In the Matter of

BUILDING AND CONSTRUCTION TRADES COUNCIL OF PORTLAND AND VICINITY, AFL, a Labor Organization; MILLWRIGHTS AND MACHINE ERECTORS UNION, LOCAL No. 1857, Chartered by UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL, a Labor Organization,

and

INTERNATIONAL ASSOCIATION OF MACHINISTS

DEPOSITIONS OF R. R. LAUTERMILCH
AND J. R. BAKER

The depositions of R. R. Lautermilch and J. R.

General Counsel's Exhibit No. 2—(Continued)
Baker, called by the Respondents, Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., pursuant to Order Granting Application to Take Depositions, dated the 27th day of October, 1948, signed by Thomas P. Graham, Jr., Regional Director, National Labor Relations Board, Nineteenth Region, and pursuant to Section 203.30 of the Board's Rules and Regulations, Series 5, as amended, before Earl W. Radford, a Notary Public of the State of Illinois, in Room 1440, 120 South La Salle Street, Chicago, Illinois, on Monday, November 1, 1948, at 2:00 o'clock p.m.

Present:

MR. MELTON BOYD,

Attorney, Appearing in Behalf of the
General Counsel, National Labor Relations Board;

MESSRS. LEDERER, LIVINGSTON,
KAHN & ADSIT,

120 South La Salle Street,
Chicago 3, Illinois, and

MR. HUGH L. BARZEE,

Pacific Building,
Portland, Oregon, by

MR. PHILIP C. LEDERER,

On Behalf of Respondents.

MESSRS. GREEN, LANDYF & PETERSON,

1003 Corbett Building,
Portland, Oregon, and

General Counsel's Exhibit No. 2—(Continued)

MR. DANIEL D. CARMELL,
130 North Wells Street,
Chicago 6, Illinois, by

MR. JOSEPH E. GUBBINS,
On Behalf of Building and Construction
Trades Council of Portland and Vicinity,
AFL.

Mr. Lederer: Today, respondents Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., will take the depositions of Mr. R. R. Lautermilch and Mr. J. R. Baker, in pursuance of an Order signed by Thomas P. Graham, Jr., Regional Director, National Labor Relations Board, Nineteenth Region, on October 27, 1948, ordering the taking of said depositions pursuant to Section 203.30 of the Board's Rules and Regulations, Series 5, as amended.

Said Order specifies that said depositions shall be taken before one Alfred Frederick, official Court Reporter for Cook County. Mr. Alfred Frederick is a Reporter for the Edward J. Walsh Court Reporting Service, and said service has seen fit to send to the place of taking these depositions one Earl W. Radford in the place and stead of said Alfred Frederick.

It is stipulated by and between counsel for the Building and Construction Trades Council of Portland and Vicinity and Millwrights and Machine Erectors Union, Local No. 1857, Chartered by United Brotherhood of Carpenters and Joiners of

General Counsel's Exhibit No. 2—(Continued)
America, and counsel for the respondent companies here present, that these depositions may go forward before the said Earl W. Radford in the place and stead of the said Alfred Frederick, before whom these depositions were scheduled to be taken, and that the said Earl W. Radford may have the same powers and authority accorded the said Alfred Frederick under the terms of said Order of October 27th.

R. R. LAUTERMILCH

called as a witness by the respondents, Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., having been first duly sworn to testify the truth, the whole truth and nothing but the truth, deposed as follows:

Direct Examination

By Mr. Lederer:

Q. State your name, please.

A. My name is Ralph R. Lautermilch.

Q. Your address, Mr. Lautermilch?

A. Business address?

Q. State both.

A. My business address is 400 West Madison Street, Chicago, Illinois. My residence is 2731 Simpson Street, Evanston, Illinois.

Q. What business is carried on at 400 West Madison Street, Chicago, Illinois?

A. The business is the business of building, and general contracting.

Q. Is that a partnership or a corporation, or

General Counsel's Exhibit No. 2—(Continued)
(Deposition of R. R. Lautermilch.)

what is it? A. That is a corporation.

Q. What is the name of the corporation?

A. The full name of the corporation is Campbell-Lowrie-Lautermilch Corporation. [5*]

Q. Are you an officer of that corporation?

A. I am.

Q. What is your official title as officer?

A. I am the President of the corporation.

Q. Were you the President of that corporation on the 21st day of February, 1947? A. I was.

Q. And at all times since that date?

A. Yes.

Q. I have a document here, entitled "Memorandum of Agreement," which I have marked Respondent Companies' Exhibit 1, for the purpose of identification. I show you this document, Mr. Lautermilch, and ask you to look at it, and then tell whether or not it bears your signature on behalf of Campbell-Lowrie-Lautermilch Corporation. (Handing document to the witness.)

A. Yes. I identify the signature, and the agreement.

Q. State how you happened to enter into this agreement on behalf of your company with Building and Construction Trades Council of Portland and Vicinity.

A. The agreement was presented to me by the Building and Construction Trades Council, with the request that [6] we sign it, and as this is the usual procedure, the agreement was signed by myself.

General Counsel's Exhibit No. 2—(Continued)
(Deposition of R. R. Lautermilch.)

Mr. Lederer: The respondent companies offer this document, marked Respondent Companies' Exhibit 1, for the purposes of identification, into evidence as Respondent Companies' Exhibit 1.

Mr. Boyd: No objection on the part of counsel appearing for the General Counsel.

Mr. Gubbins: No objection from the Building and Construction Trades Council of Portland and Vicinity.

(A photostatic copy of the document referred to, marked "Respondent Companies' Exhibit 1," is attached to and made a part of these depositions. See Transcript, page 12, agreement to substitute photostatic copies.)

Q. (By Mr. Lederer): I show you what purports to be a letter dated March 7, 1947, purporting to come from Campbell-Lowrie-Lautermilch Corporation, addressed to Portland Building Trades Council, Portland, Oregon: "Attention: Mr. Fred Manash, Secretary," "Re: Lloyd A. Fry Roofing Company Felt Plant, Portland, Oregon," which said document I have marked Respondent Companies' [7] Exhibit 2, for identification. I will ask you whether that document bears your signature. (Handing document to the witness.)

A. Yes, sir. That is my signature.

Mr. Lederer: I offer said document, marked Respondent Companies' Exhibit 2, for the purposes of identification, into evidence as Respondent Companies' Exhibit 2.

General Counsel's Exhibit No. 2—(Continued)
(Deposition of R. R. Lautermilch.)

Mr. Boyd: Objection is made by counsel for the General Counsel to the relevancy of this document.

(A photostatic copy of the document referred to, marked "Respondent Companies' Exhibit 2," is attached to and made a part of these depositions. See Transcript, page 12, agreement to substitute photostatic copies.)

Mr. Lederer: No further questions.

Cross-Examination

By Mr. Gubbins:

Q. In the last paragraph, the third line, appears the word "Owner." Will you state for the record just what that word has reference to? [8]

Mr. Boyd: I am preserving an objection to this line of testimony, because of its irrelevancy. It is understood that the witness will be permitted to answer your question.

The Witness: Where I state "Owner," I had in mind Mr. Fry, Sr., of the Fry Roofing Company, and the Volney Felt Mills.

Mr. Gubbins: That is all.

Cross-Examination

By Mr. Boyd:

Q. Do you have an independent recollection, Mr. Lautermilch, of the occasion of writing that letter? I mean, without refreshing your recollection from

General Counsel's Exhibit No. 2—(Continued)
(Deposition of R. R. Lautermilch.)

an examination of the letter, can you think back and recall the circumstance of writing that letter?

A. No, no particular circumstance, other than that we operate as an organized outfit, and we are often requested to sign similar letters with other organizations.

Q. Who in this case requested such letter?

A. I cannot recall that at the moment.

Q. You do not recall what occasioned the writing of the letter, then?

A. No, other than my own opinion that it was with [9] the idea of keeping the job organized.

Q. I infer from the fact that no other questions were directed to you that you were not in Portland in the latter part of August or the early part of September of 1947, in person?

Mr. Lederer: Objection, on the basis that such question goes beyond the scope of the direct examination.

Mr. Boyd: I renew the question. He is preserving an objection for the record.

The Witness: I think I cannot answer that.

Q. (By Mr. Boyd): Who was your man in charge at that time?

A. We had a superintendent by the name of Eric Norling.

Q. And he was the superintendent in charge of construction of the building that was then being built by Fry Roofing Company?

General Counsel's Exhibit No. 2—(Continued)
(Deposition of R. R. Lautermilch.)

A. That is correct, or the Volney Paper Mill Company.

Q. I will not take you to task on that. I mean, it was being built at that time at the site adjacent to that of the Fry Roofing Company?

A. Yes, sir.

Q. Your contract for the construction of [10] that building, though, had originally been executed between your corporation and Fry Roofing Company, had it not?

A. I think that is correct.

Mr. Boyd: That is all.

Redirect Examination

By Mr. Lederer:

Q. Mr. Lautermilch, I would like to ask you, referring again to Respondent Companies' Exhibit 1, did you have any other construction jobs in Portland, Oregon, or around the vicinity of Portland, Oregon, on that date, that is, February 21, 1947?

A. No, other than the job for the Fry Roofing Company. This was the only operation we had at that date, or near that date.

Q. Calling your attention again to Respondent Companies' Exhibit 2, I believe you stated on cross-examination that, referring specifically to the last paragraph of said document, the use of the word "Owner" referred to Mr. Lloyd Fry for the Volney and Fry companies, is that correct?

General Counsel's Exhibit No. 2—(Continued)
(Deposition of R. R. Lautermilch.)

Mr. Boyd: Objection preserved, on the ground stated before.

The Witness: That is correct.

Q. (By Mr. Lederer): Is it your understanding that Mr. [11] Fry individually was the owner?

A. To the extent that he was able to direct operations and procedure.

Q. Did you at that time deal with the Volney and Fry companies, as represented by Mr. Fry, Sr.?

A. Yes.

Q. You knew of the existence of those companies? A. Yes, sir.

Q. And did you also know that it was the Volney company and the Fry company, the parent corporation, who wished the construction work done in Portland? A. Oh, yes; yes, sir. [12]

* * *

/s/ R. R. (RALPH)
LAUTERMILCH.

Subscribed and sworn to before me this 3rd day of November, A.D. 1948.

[Seal] /s/ EARL W. RADFORD,
Notary Public.

My Commission expires September 8, 1949. [13]

General Counsel's Exhibit No. 2—(Continued)

J. R. BAKER

called as a witness by the respondents, Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., having been first duly sworn to testify the truth, the whole truth and nothing but the truth, deposed as follows:

Direct Examination

By Mr. Lederer:

Q. Will you state your full name?

A. John R. Baker.

Q. Your address?

A. Business address, 5818 Archer Road, Summit, Illinois.

Q. By whom are you employed?

A. Volney Felt Mills, Inc.

Q. In what capacity?

A. Chief engineer.

Q. How long have you been so employed?

A. Fourteen years.

Q. You were so employed all during the year 1947?

A. Yes, sir.

Q. Did you have any connection with the opening of the Volney Felt Mills' plant in Portland, Oregon?

A. Yes, sir.

Q. Tell just what you did, and in what capacity, in connection with that project.

A. I went to Portland and retained a contracting [14] company to supply the labor and tools and material.

General Counsel's Exhibit No. 2—(Continued)
(Deposition of J. R. Baker.)

Q. Will you identify what you are saying, as to date?

A. That was some time the latter part of March.

Q. Of what year? A. 1947.

Q. You did what?

A. I made an agreement with St. Johns Motor Express.

Mr. Lederer: I am going to move that that last clause be stricken, as not responsive.

Mr. Boyd: I would urge that the remark be left in, but invite the witness later to explain the remark, in the course of his testimony.

Mr. Lederer: Then I withdraw my motion to strike.

Q. You got out to Portland in March of 1947, is that right? A. Yes, sir.

Q. What were you instructed to do when you went out there?

A. I was instructed to make arrangements with some contracting concern to supply labor and tools and perform the work of setting up machinery in a new paper mill, a new felt mill.

Q. What did you do in pursuance of your instructions when you went out to Portland? [15]

A. I contacted the St. Johns Motor Express, and made an agreement with them, for them to handle the work for me.

Q. Did you tell St. Johns Motor Express anything about the hiring of labor?

A. Yes, I did.

General Counsel's Exhibit No. 2—(Continued)
(Deposition of J. R. Baker.)

Q. What did you tell them, and when? Maybe you had better state when this conversation took place, and with whom.

A. This conversation was with Mr. Eggeston, of the St. Johns Motor Express, and was some time the latter part of March.

Q. 1947? A. 1947.

Q. Where did it take place?

A. It took place in the office of the Lloyd A. Fry Roofing Company, at Portland.

Q. What did you say to Mr. Eggeston, and what did he say to you?

A. I told him that we would have to use Machinists Union No. 63 of the American Federation of Labor, to set up this machinery.

Q. Was that what you had been instructed by your principals to tell him? A. Yes, sir. [16]

Q. What did he say to you?

A. He said that was satisfactory to him.

Q. Were you, on behalf of Volney Felt Mills, Inc., in complete charge of the setting of machinery?

Mr. Boyd: That is objected to.

The Witness: I was.

Q. (By Mr. Lederer): Were you instructed by your principals, Volney Felt Mills, Inc., to supervise the setting of machinery?

Mr. Boyd: I object.

The Witness: I was.

Mr. Boyd: The point of the objection is that the witness has identified that his principals were Fry

General Counsel's Exhibit No. 2—(Continued)
(Deposition of J. R. Baker.)

Roofing Company and Volney Felt Mills, his only identification being that of the resident engineer of Fry Roofing Company.

Mr. Lederer: Subject to those objections, I have no objection to permitting the addition of the name "Fry Roofing Company" to Volney Felt Mills, wherever that name appears.

Q. (By Mr. Boyd): Would your answer be the same if the questions had been directed to you, that your principals, Fry Roofing Company and Volney Felt Mills, directed this action be taken?

A. That is right. [17]

Mr. Boyd: I do not urge the objection, then.

Q. (By Mr. Lederer): Did you personally have anything to do with the hiring of any employees for the setting of machinery?

A. None whatever.

Q. Did you know anything about whom St. Johns Motor Express Company may have hired until after such employees had been hired?

A. No, I did not.

Q. When, after March of 1947, was the first time you discussed with anyone the question of employees for the setting of machinery?

A. About the 15th of August.

Q. What year? A. 1947.

Q. Was that a conversation? A. Yes, sir.

Q. State the date on which the conversation took place, the place at which it took place, and who were present.

General Counsel's Exhibit No. 2—(Continued)

(Deposition of J. R. Baker.)

A. The conversation took place in the office of the Lloyd A. Fry Roofing Company, in Portland, Oregon, on the 15th of August, 1947, between myself and Mr. Eggleston, of the St. Johns Motor Express, at which I told him I was ready to start work, and wished that [18] he would get men on the job.

Q. What did he say, if anything?

A. He said he would get busy and get them out there right away.

Q. Did you have any discussion with Mr. Eggleston at that time as to who the men could be who would be put on the job? A. I did not.

Q. When was the next time that you entered into any discussion as to the employment of men for the setting of machinery?

A. About the 29th of August.

Q. What year? A. 1947.

Q. Was this a conversation? A. Yes, sir.

Q. Was this conversation over the telephone, or face to face? A. It was face to face.

Q. Please state where it took place, and who was present.

A. It took place in my office, in the Felt Mill Building, with Mr. Eric Norling, Superintendent for Campbell-Lowrie-Lautermilch Corporation.

Q. Was anyone else present? [19]

A. No, sir.

Q. What did he say to you, and what did you say to him?

General Counsel's Exhibit No. 2—(Continued)
(Deposition of J. R. Baker.)

A. He came to me and said he had been informed by the Building Trades Council that if we did not get rid of this other union, there wouldn't be any strike, but the men just wouldn't come to work any more.

Q. By "this other union," what union was he referring to? A. Machinists Union No. 63.

Q. Was he relating something that had been told to him, is that what that conversation was?

A. Yes, sir.

Q. Told to him by whom?

A. Mr. Manash.

Q. And who is Mr. Manash?

A. He is Secretary, I think, of the Building Trades Council.

Q. A. F. of L.? A. A. F. of L.

Q. What did you say to Mr. Norling?

A. I told him I would get in touch with Mr. Eggleston of St. Johns Motor Express and see what could be done about it. [20]

Q. Then did you get in touch with Mr. Eggleston? A. Yes, sir.

Q. How?

A. I called him by phone right away.

Q. And what did you tell him?

A. He came over to my office.

Q. This was on August 29, 1947?

A. Yes, sir.

Q. Did you have a conversation with him in your office? A. Yes, sir.

General Counsel's Exhibit No. 2—(Continued)
(Deposition of J. R. Baker.)

Q. Tell what was said.

A. I told him it didn't look like we were going to be able to finish the job with those men, that he would have to put on some men who were satisfactory.

Q. What else did you tell him, if anything?

A. I told him he would have to do it.

Q. Did you have any other discussions about the employment of men for the setting of machinery?

A. No, sir. [21]

* * *

Cross-Examination

By Mr. Boyd: [22]

* * *

Q. Was it your understanding, from Norling's statement to you, that Manash had reference to the men working for Campbell - Lowrie - Lautermilch Corporation as being the persons who would refuse to come to work if the machinists were kept on the job?

Mr. Lederer: Objection.

The Witness: That was my understanding. [28]

* * *

Q. Did Manash talk with you on Tuesday, or any time in the week that followed Labor Day, concerning the replacement of them?

A. I don't think so, no.

Q. Did he inform you at any time, or did Nord-

General Counsel's Exhibit No. 2—(Continued)
(Deposition of J. R. Baker.)

strom, or the Millwrights' Union at any time inform you, that your company would be put on the unfair list unless they were replaced?

A. No, sir.

Q. Were you in the employ of the company in 1944 when other machinery was put into the building that was built to replace that which burned?

A. Yes, sir.

Q. At that time, or as a result of the installations made at that time, had there been an effort made by Manash then to have your company employ members of the Machinists Union to install machinery?

A. I had been told there had been, yes.

Q. That was not a matter, then, of your own personal experience? A. No.

Q. Was that told to you within a communication of your company? A. Yes, sir.

Q. It came to you in your capacity as the engineer [32] in charge of operations?

A. Yes, sir.

Q. Was that circumstance a factor taken into account by you in directing St. Johns to employ machinists to do this job? A. Yes, sir.

Q. At the time this work was done at the plant, who was the plant manager?

A. You mean the original?

Q. No. I am speaking now of the last work done. A. Mr. B. B. Alexander.

Q. Your companies, or your principals, Volney

General Counsel's Exhibit No. 2—(Continued)
(Deposition of J. R. Baker.)

and Fry, had not entered into any collective bargaining agreement with these employees, these machinists employed by St. Johns, to do this work?

A. I think they had four years before. I couldn't say for sure.

Q. I mean on this particular job.

A. No, sir.

Q. Did you have on this particular job a contract with any labor organization with reference to installing the work, installing this machinery?

Mr. Lederer: Objection. The question calls for a conclusion on the part of the witness, and I think the witness has already testified that he has [33] no personal knowledge of any such situation.

Mr. Boyd: Counsel for the company has reserved an objection in the record.

Will you read the question to him?

(Question read by the Reporter.)

The Witness: No. [34]

* * *

Redirect Examination

By Mr. Lederer:

Q. Some time ago you testified, I believe, on direct examination, that you specified to Mr. Eggleston, of St. Johns, that he hire in connection with the setting of machinery Local 63 Machinists, American Federation of Labor? A. That is right.

Q. Do you remember making that statement?

A. That is right.

General Counsel's Exhibit No. 2—(Continued)
(Deposition of J. R. Baker.)

Q. And I believe you also testified on direct [36] examination—correct me if I am mistaken—that you received instructions from your principals, Volney Felt Mills and Fry Roofing Company, to so specify with reference to labor for the installing of machinery? A. That is right.

Q. To St. Johns Motor Express, is that right?

A. That is right.

Q. Did your principals explain to you why you should hire Local 63, American Federation of Labor? A. Yes, they did.

Q. What did they tell you?

A. They told me that when this previous job went on four years before, they had promised Mr. Manash, in the event they ever built a felt mill, they would let Machinists Union No. 63 of the A. F. of L. install the machinery.

Q. Did they also call your attention to any labor contract with Campbell-Lowrie-Lautermilch Corporation?

A. I didn't understand the question.

Q. Was there mentioned in this conversation in which you received instructions, as you have testified, any contract between Building Trades Council and Campbell-Lowrie-Lautermilch [37] Corporation? A. Yes, I knew that.

Q. How did you know it?

A. I was told by Mr. Fry that Campbell-Lowrie-Lautermilch Corporation had a contract with the Building Trades Council.

General Counsel's Exhibit No. 2—(Continued)

(Deposition of J. R. Baker.)

Q. What were you told about that contract?

A. That is all I knew. I just knew they had a contract.

Q. Did you know the nature of that contract?

A. No, sir. I didn't know the nature of it, no, sir.

Q. You had no knowledge of the contents of that contract? A. No, sir.

Q. So that when you stated on cross-examination that Fry and Volney companies had no contract with any labor organization for the setting of the machinery on this job, you did not know whether or not a contract between Campbell-Lowrie-Lautermilch Corporation and the Building Trades Council was a contract to cover the machinery setting on this job?

A. I knew that it didn't cover it.

Q. How did you know that?

A. Campbell-Lowrie-Lautermilch had nothing to do with setting the machinery. [38]

Q. When you stated, however, that there was no contract with a labor organization for the setting of machinery, you assumed that the Campbell-Lowrie-Lautermilch arrangement with Fry Roofing Company and Volney Felt Mills was not a contract with a labor organization for the setting of machinery, is that right? A. That is right.

Q. And if, by any chance, the dealings that Campbell-Lowrie-Lautermilch Corporation had with the Building Trades Council, A. F. of L., had con-

General Counsel's Exhibit No. 2—(Continued)
(Deposition of J. R. Baker.)

stituted a contract for the setting of machinery, you would not know anything about that?

A. That is right. [39]

* * *

/s/ J. A. (JOHN) BAKER.

Subscribed and sworn to before me this 3rd day of November, A.D. 1948.

[Seal] /s/ EARL W. RADFORD,
Notary Public.

My Commission expires September 8, 1949.

Received in evidence Nov. 9, 1948. [40]

Mr. Boyd: Very well, your Honor. Now, may I at this time, then, offer in the record a further document which now would be marked for identification General Counsel's Exhibit number three? As a word of explanation, it is a stipulation of fact that was worked out at the time of taking the depositions in Chicago—here is a copy of it—and relates [28] to the operations of the respondents Fry and Volney in commerce, as to their corporate character as to the places of their operation, and as to the dollar volume of their operations. It should be noted by the Trial Examiner that the stipulation in paragraph numbered four, Roman four, reserves the position taken by the respondents Fry and Volney, that the operation of setting the machinery

General Counsel's Exhibit No. 2—(Continued)
in the building of Fry and Volney, in which work of setting the machinery the machinists were engaged at the time of the discharge alleged in this proceedings, that the respondents Fry and Volney urge and contend that that operation was not an operation affecting commerce. That is the position they took in their pleading. They desire to reserve that position in this stipulation relating to the facts as bearing upon their operations in commerce. Is that a correct statement?

Mr. Barzee: That is a correct statement. We are still relying on that position. [29]

* * *

(Whereupon, the document referred to was marked General Counsel's Exhibit No. 3 for identification and received in evidence.) [31]

GENERAL COUNSEL'S EXHIBIT No. 3
United States of America Before the National
Labor Relations Board, Nineteenth Region

Case No. 36-CA-1

In the Matter of

LLOYD A. FRY ROOFING COMPANY, a Corporation; VOLNEY FELT MILLS, INC., a Corporation; ST. JOHNS MOTOR EXPRESS COMPANY, a Corporation

and

INTERNATIONAL ASSOCIATION OF MACHINISTS.

Case No. 36-CB-2

In the Matter of

BUILDING AND CONSTRUCTION TRADES COUNCIL OF PORTLAND AND VICINITY, AFL, a Labor Organization; MILLWRIGHTS AND MACHINE ERECTORS UNION, LOCAL No. 1857, Chartered by UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL, a Labor Organization

and

INTERNATIONAL ASSOCIATION OF MACHINISTS

STIPULATION ON FACTS RELATING TO
RESPONDENTS' OPERATIONS AFFECT-
ING COMMERCE

Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., respondents herein, by their undersigned counsel, and the undersigned Melton Boyd, attorney for the General Counsel of the National Labor Relations Board, stipulate in the above captioned proceedings as follows:

I.

Lloyd A. Fry Roofing Company, on the dates alleged in the Complaint herein, was and now is a corporation duly organized and existing by virtue of the laws of the State of Delaware, and licensed to engage in business in the State of Oregon, and in ten other states of the United States. Its principal offices are in Chicago, Illinois, and its place of business in Oregon is at its plant at 3750 N. W. Yeon Avenue, Portland, Oregon, where it is engaged in the manufacture, distribution, and sale of felt roofing. Its total annual business at its several plants throughout the United States is in excess of \$1,000,000. Included in this figure is the dollar volume of its business at its plant at Portland, Oregon, where annually it purchases materials and supplies valued in excess of \$100,000, of which more than 30% is transported to this place of business in interstate commerce from states other than the State of Oregon, and annually it sells and distributes its products produced at this plant valued in excess of \$200,000, of which more than 40% is transported from its place of business in Oregon in interstate commerce to destination in other states.

II.

Volney Felt Mills, Inc., on the dates alleged in the Complaint herein, was and now is a corporation duly organized and existing by virtue of the laws of the State of Delaware, and licensed to engage in business in the State of Oregon, and in three other states in the United States. Its principal offices are in Chicago, Illinois, and its place of business in Oregon is at its plant at 3750 N. W. Yeon Avenue, Portland, Oregon, where it is engaged in the manufacture, distribution and sale of "roofing felt. Its total annual business at its several plants throughout the United States is in excess of \$1,000,000. Included in this figure is the dollar volume of its business at the plant at Portland, Oregon, where annually it purchases materials and supplies valued in excess of \$100,000, of which more than 20% is transported to this place of business in interstate commerce from states other than the State of Oregon, and annually it sells and distributes its products produced at this plant valued in excess of \$200,000, of which more than 20% is transported from its place of business in Oregon in interstate commerce to destination in other states.

III.

Volney Felt Mills, Inc., operates as a subsidiary of Lloyd A. Fry Roofing Company, each corporation having directors and officers in common.

IV.

Respondents Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., deny that any of the work

being done at the time and place specified in the Complaint affected commerce.

Dated November 2, 1948.

LLOYD A. FRY ROOFING
COMPANY and VOLNEY
FELT MILLS, INC.,

By LEDERER, LIVINGSTON,
KAHN AND ADSIT,

HUGH L. BARZEE,

By /s/ PHILIP C. LEDERER,
Their Attorneys.

BUILDING AND CONSTRUCTION TRADES
COUNCIL OF PORTLAND AND VICIN-
ITY, AFL,

MILLWRIGHTS AND MACHINE ERECTORS
UNION, LOCAL NO. 1857, Chartered by
UNITED BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMERICA, AFL,

By /s/ DANIEL D. PARMELL,

By /s/ JOSEPH E. GUBBINS,
Their Attorneys.

/s/ MELTON BOYD,

Attorney for the General Counsel of the National
Labor Relations Board.

Received in evidence Nov. 9, 1948.

B. B. ALEXANDER

a witness called on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Boyd:

Q. You are Mr. Alexander? A. Yes, sir.

Q. Will you state your name in full?

A. B. B. Alexander.

Q. And you are what?

A. I am the Portland manager of Fry Roofing and Volney Mills.

Q. And were you such throughout the year of 1947? A. Yes, sir.

Q. Last year. You were then in charge of the operations of these two companies during the time of the installation of the machinery at the new Felt Mills known as the Volney Felt Mills, Inc.?

A. Yes, sir.

Q. Would you please state, Mr. Alexander, an approximate figure of the dollar value of the machinery that was installed in the Volney Felt Mills' building beginning in late August of last year and until the time of its [33] completion, which I understand is in January of this year?

A. Well, that would only be a sort of a guess.

Q. Your best estimate of what the value of the machinery is what is being asked for.

A. I would say around \$175,000 perhaps, one hundred fifty to one hundred seventy-five.

Q. And that machinery was procured where?

(Testimony of B. B. Alexander.)

A. Well, it was procured—the most of it was procured in Wisconsin; other parts of it, I wouldn't know from where all parts of it came.

Mr. Landye: Mr. Boyd, I didn't want to interrupt. I was talking about the question on St. Johns. You are back on Volney, is that correct?

Mr. Boyd: That was the purpose. I will come to St. Johns in a moment.

Mr. Landye: Oh.

Mr. Boyd: May I have the answer of the witness?

(Last answer of the witness read back by the Reporter.)

Q. (By Mr. Boyd, continuing): Insofar as you know, was any of it manufactured in the state of Oregon?

A. I would say probably some small parts of it. This was a used machine, and we did have parts that were manufactured here for the machine.

Q. Well, was the machinery machinery that had been used in other operations of Fry Roofing or Volney— [34] A. No.

Q. It had been purchased from another felt mill operations in Wisconsin?

A. Yes, or paper mill.

Q. By what means was it shipped from Wisconsin to Oregon?

A. It was shipped by railroad.

Q. Was it all delivered to the plant site before the installation began, or was some of it received after the installation began?

(Testimony of B. B. Alexander.)

A. I think it was all delivered and stored in the roofing plant building prior to the starting of the installation.

Q. Now, as a matter of information helpful to the Trial Examiner, the Volney Felt Mills' building occupies a parcel of ground here in the city of Seattle—I mean the city of Portland, does it not?

A. Yes, sir.

Q. And immediately adjacent to it, fronting on the same street, is another building that is occupied by Fry Roofing Company?

A. That is right.

Q. And at that time, in 1947, your Company was engaged in the construction of this new building that was later occupied as the Volney Felt Mills' manufacturing plant?

A. Yes, sir.

Q. And the machinery, when received, was, to your recollection, [35] put in storage in the Fry Roofing Company building until such time as there was occasion to install it and you moved it from that building over to the new building of Volney Felt Mills?

A. That is correct.

Q. Do you recall when it was that the first of the machinery was shipped to your plant here?

A. Well, it was in the first part of 1947. I would say January, February, and March.

Q. Was that at about the time the new building was begun?

A. Yes; the new building was started, I believe, about the same time. It might have been some of this machinery came in before the building was

(Testimony of B. B. Alexander.)

started. I am just not clear on that. The machinery had been procured before the building was under way. [36]

* * *

GENERAL COUNSEL'S EXHIBIT No. 4

[Letterhead]

Lloyd A. Fry Roofing Company

Manufacturers

3750 N. W. Yeon Avenue

Portland 8, Oregon

September 26, 1947

National Labor Relations Board

310 Corbett Bldg.

Portland, Oregon

Attention:

Thomas P. Graham, Jr.

Gentlemen:

In reply to your letter of September 24th, and enclosures addressed to the Lloyd A. Fry Roofing Company.

Lloyd A. Fry Roofing Company do not have any project under construction and had no connection with employing or terminating the employment of the persons mentioned in your enclosed charges.

Volney Felt Mills, Inc. did let a general contract to St. Johns Motor Express Company to move.

place and install certain felt mill machinery in a new felt mill plant located near the roofing plant of the Lloyd A. Fry Roofing Company on N.W. Yeon Avenue, Portland, Oregon.

Yours very truly,

LLOYD A. FRY ROOFING
COMPANY,

/s/ B. B. ALEXANDER,
Portland Manager.

[Stamped]: Received Sept. 29, 1947, N.L.R.B.

Received in evidence Nov. 9, 1948.

R. W. JOHNS

a witness called on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Boyd:

Q. What is your name?

A. Mr. R. W. Johns.

Q. What is your position?

A. Business representative of the Machinists Local 63, Portland, Oregon.

Q. Did you hold such position throughout the year of 1947? [42] A. I did.

Q. Directing your thought to a construction project that was going on at the plants of Fry Roofing Company and Volney Felt Mills in the summer of 1947, may I inquire when you first had

(Testimony of R. W. Johns.)

knowledge of any work that was to be done there in setting machinery?

A. I think it was on a Mouday—perhaps Tuesday—August the 25th or 26th just in general conversation in the office. Mr. Detloff who has the dispatching of men out of our office made a comment that he had had a 'phone call from the St. Johns Motor Express, and he was dispatching two machinists and two helpers to the Fry Roofing Company. Where I first actually came into contact with it personally was on a 'phone call, Thursday afternoon of August the 28th from Mr. Donnelly, one of the machnists down there who was acting as a shop man. He called me and told me that the business represenative, a Mr. Sandstrom of the Millwrights, had been there talking with Mr. Taylor. [43]

* * *

Q. (By Mr. Boyd, continuing): Now, how many men were working there at that time? [44]

A. There were four there, two machinists and two helpers.

Q. What were their names?

A. Mr. Donnelly and Mr. O'Neel were the machinists. Mr. Baker and Mr. Bozarth were the helpers.

Q. Now, do you know of what organization they were members, if any?

A. They all belonged to the machinist's Local 63.

Q. Do you know what date they had gone to work there?

(Testimony of R. W. Johns.)

A. They went to work on Wednesday morning; that would be August the 27th.

Q. And the occasion for your going there that you are now describing was on the next following day?

A. On the following afternoon, on a 'phone call from Mr. Donnelly.

Q. What was the nature of the work which they were engaged in doing?

A. They were installing machinery.

Q. And what type of machinery?

A. I don't know how to answer that question. Machinery is machinery. There is naturally many different types of machinery. I would presume from the name of the company it would be machinery for the manufacture of roofing materials.

Q. What ensued, or what happened after your conversation with Taylor? [45]

A. The following conversation with Mr. Taylor—nothing happened that day. I returned to the office. The following morning, sometime in the forenoon—that would be Friday—I again received a call from Mr. Donnelly. He told me that Mr. Manash, the secretary of the building trades Council and Mr. Sandstrom were both there and requested that I come down. I had a little delay getting there, probably a half an hour, maybe three-quarters of an hour and when I got to Fry neither Mr. Manash nor Mr. Sandstrom were present. I was informed by Mr. Taylor that Mr. Manash and Mr. Sandstrom had been there and requested that——

(Testimony of R. W. Johns.)

Mr. Landye: Just a minute; I move to strike that as hearsay.

Q. By Mr. Boyd, continuing): Identify Mr. Taylor.

Mr. Boyd: Beg pardon?

Trial Examiner Ward: I will deny that motion.

Q. (By Mr. Boyd, continuing): First identify Mr. Taylor more definitely.

A. Mr. Taylor was the foreman representing St. Johns Motor Express in charge of the installation of the machinery.

Q. Very well; now proceed.

A. Mr. Taylor told me they had been there and requested that he remove the machinists. He again told me that he would not have any final say on that; it would be from his office, but he told me that he thought that Mr. Manash and Mr. [46] Sandstrom were at Mr. Eggleston's office.

Q. Who was Mr. Eggleston?

A. Mr. Eggleston, as I found out later, was connected with the St. Johns Motor Express. His official title I don't know. Mr. Taylor excused himself and came back in several minutes and told me that he had made a 'phone call and Mr. Manash was in Mr. Eggleston's office. I immediately left the Fry Roofing building and went to the St. Johns Motor Express office and I introduced myself to the girl, and as I remember she contacted Mr. Eggleston and told me to come upstairs. Mr. Eggleston at that time had an office on rather a kind of a mezzanine or balcony. In going into the office, why, Mr. Manash was there. I knew him and needed no introduc-

(Testimony of R. W. Johns.)

tion. I introduced myself to Mr. Eggleston, and we discussed the situation at the Fry Motor Company—or the Fry Roofing Company, pardon me, and the removal of the machinists and replacement of Millwrights and during our discussion Mr. Manash informed Mr. Eggleston that he was citing him to appear before the Executive Council of the Building Trades Council, the Construction Trades Council to show cause why he should not be placed on the unfair list. Mr. Eggleston, as I remember it, informed Mr. Manash that he had no contract with the Building Trades Council and would not answer any summons to appear before their Executive Board. We discussed this situation there [47] for some little length of time, more or less in generalities, and I told Mr. Manash and Mr. Eggleston I intended to use whatever means I could to keep the machinists on the job; that I felt they were justified in that job; it was their work, and if St. Johns Motor Express—as far as I know they voluntarily called the machinist local for the men. We had no contract with them. It was a voluntary move on their part. Mr. Eggleston, as I remember it, told me that he was entirely satisfied with the work of the machinists and felt that we should try to keep them on the job. That was about the end of the conversation in the St. Johns Motor Express, then, on Friday.

Q. Well now, was Manash there throughout this entire conversation?

A. Yes, Mr. Manash was in the office when I arrived. Mr. Manash and I left together.

Q. The two of you left together. Did anything

(Testimony of R. W. Johns.)

else occur other than his stating that—other than you relate and as you relate that he stated that St. Johns was being cited to appear before the Council?

A. No; not only that, he said he had served Mr. Eggleston with a letter citing him to appear before the Executive Board. [48]

* * *

Cross-Examination

By Mr. Eagen:

Q. Can you tell me the day on which you had the conversation with Mr. Manash? Was that on—

A. That was on Friday.

Q. Friday. A. In Mr. Eggleston's office.

Q. August the 28th, was it? A. Yes.

Q. 1947. Now, what conversation—can you relate a little more fully than you did on direct as to what was said insofar as Mr. Manash was concerned at the time you were present?

A. I don't get your question, Mr. Eagen.

Q. What conversation took place? What did Mr. Manash say?

A. There was quite a general discussion and Mr. Manash had told Mr. Eggleston, or was telling him that if failing to comply with—or to appear before his Executive Board and show cause why he shouldn't be placed on the unfair list, that that action would be taken, the Building Trades' men would be removed from the Fry Roofing Company job and pickets placed on the building. [52]

* * *

(Testimony of R. W. Johns.)

Q. What, if anything, was said to you—or strike that. Were you a party to any of the conversation prior to the Millwrights' appearance in this situation relating to affiliation of the machinists?

A. With who?

Q. Anyone. Was there any discussion which you heard, or in which you were a party to regarding affiliation of the [53] machinists?

A. No. I may have discussed it with many people over the last four or five years due to the fact that part of the time the machinists have been in the A. F. of L.

Q. The machinists' office was in the Labor Temple at this time?

A. It was at that time, yes.

Q. Yes. And you first went to the Fry-Volney premises on about the 27th?

A. On Thursday afternoon, the 27th.

Q. Yes. And that is when you first met Mr. Taylor, was it not? A. It is.

Q. And in introducing yourself to Mr. Taylor, did you present him with your personal card, your business card?

A. I don't think I did. As my memory serves me, Mr. Barzee, I think I gave that card to Mr. Eggleston the following morning.

Q. You do recall giving a card, you say, to Mr. Eggleston? A. Yes.

(Testimony of R. W. Johns.)

Mr. Barzee: Mark this document as respondent Fry and Volney's one, I suppose.

(Whereupon, the document referred to was marked F. & V. Exhibit No. 1 for identification.)

Q. I hand you a document marked F. and V. one for [54] identification and ask you if that is the card to which you just referred?

A. I presume it is, yes.

Q. Yes. And you have noted on the card indicating that you and the union represented were affiliated with the A. F. of L.?

A. It probably is, yes.

Q. Look at it. A. It is.

Q. Look at it and state for the Board—

A. It is.

Q. This exhibit referred to reads as follows: "Willamette Lodge No. 63, International Association of Machinists, Affiliated with the American Federation of Labor."

A. I am not denying it.

Q. No.

Mr. Barzee: I offer this in evidence.

Mr. Boyd: I would object to the receipt of it in evidence only on the grounds of relevancy. It is quite clear—I was interested in fixing the date. It was quite clear that the presentation of this card occurred after the machinists were hired on the job and consequently there could be no relevancy. They plead that they were mistaken in believing the ma-

(Testimony of R. W. Johns.)

chinists were with the A. F. of L. They rely upon the presentation of a card presented to them after the machinists were hired. It's wholly irrelevant, and it's only on those grounds that I object to its [55] introduction.

Trial Examiner Ward: Objection will be overruled. It will be received.

(Whereupon, the document having been marked F. and V. Exhibit No. 1 for identification, was received in evidence.)

RESPONDENTS' F. & V. EXHIBIT No. 1

[Business Card]

Residence: University 0881

Ralph W. Johns
Business Representative

Willamette Lodge No. 63
International Association of Machinists

Affiliated With the American Federation of Labor
505 Labor Temple
Atwater 0171 Portland, Oregon

Received in evidence Nov. 9, 1948.

Q. (By Mr. Barzee, continuing): Was Local 63 members of the A. F. of L. at that time?

A. The machinists' local 63?

Q. Yes. A. No.

Q. And neither were you, of course.

A. As an individual, yes, through other affiliations.

(Testimony of R. W. Johns.)

Q. And who was it again please who mentioned the threat of economic sanctions?

A. Mr. Manash.

Q. Mr. Manash. And what was his language?

A. His exact language I couldn't give you.

Q. Substantially.

A. Substantially that if the machinists were not removed from the job that the Building Trades Council would take strike action against Fry Roofing, withdraw the building, construction trades' workmen.

Q. Yes. You claim no contract with Volney or Fry in connection——

A. Pardon? [56]

Q. You claim no contract on the part of Local 63 with Fry or Volney in this——

A. That is right.

Q. ——work.

Mr. Barzee: That is all.

Trial Examiner Ward: The next gentleman this way, do you have any questions?

Mr. Landye: Yes.

Q. (By Mr. Landye): Was there any inquiry by Mr. Eggleston or Mr. Taylor of the St. Johns prior to August the 26th, or about the 27th, as to what your wage rates were in the machinists union for this particular kind of work addressed to your office?

A. Not to my knowledge. I would say for all of you that on approximately August the 15th—I am not too positive of the date, but it was about

(Testimony of R. W. Johns.)

that time—a gentleman called over the 'phone, introduced himself over the 'phone as Bob Wilhelm. He made no connection at all to any firm. He told me that he was considering bidding on a job and wanted to know what the wage rates were and the availability of construction machinists. Well, now, whether that has any connection with this firm or not, I don't know, but that is the best way I can answer your question.

Q. Yes. Well, I want to get this straight. As far as you know, prior to August the 26th or August the 27th, you or [57] Mr. Detloff had no conversations with any representative of either Fry or St. Johns?

A. I know of none. I don't know about Mr. Detloff. I can speak positively for myself, I did not.

Q. Now, Mr. Detloff is the financial secretary of 63, isn't he, and the system you use up there is that when a man wants to call for members of machinists 63, he calls the office there of 63?

A. That is right.

Q. Which, at that time, was located at the Labor Temple on Fourth Street, isn't that correct?

A. That is correct.

Q. And when they call in such as that, you dispatch the members of 63, isn't that correct?

A. That is correct.

Q. You dispatch no other man, do you, but members of 63?

A. We have many times, Mr. Landye, dispatched men who were not members of Machinists Local 63.

(Testimony of R. W. Johns.)

Q. When you don't have available men to fill the job yourself?

A. Sometimes we do not have available men and sometimes when we have men who might be members of 63 but do not have the qualifications.

Q. For that particular job?

A. That is right. [58]

Q. In other words, put it this way: It's a fair statement that you dispatch the members of Local 63 first; if there is a member of 63 who can do the job, you dispatch him?

A. Certainly.

Q. Yes. Then if you have a member—a job comes in of which a member of 63 can't do or you think is not competent for that particular thing, why, you give that to a man who is not a member of 63?

A. That is right.

Q. Or a third situation would be that if all of the jobs were filled—I mean just fresh out in the hiring hall—that you would then give that to a man who was not a member of 63 and he would come in later if he stayed on the job long enough?

A. That is right.

Q. Now, these members that were dispatched on this August the 27th, they were all members of 63 I believe you testified?

A. Yes.

Q. They had been members for some time, had they, Mr. Jones?

A. To the best of my knowledge, yes. [59]

* * *

Q. I see. Now, when you came in there, was there any conversation, Mr. Johns, of Mr. Eggleston

(Testimony of R. W. Johns.)

asking you whether or not you were affiliated with the A. F. of L.?

A. I can't recall, Mr. Landye; I am very honest about it.

Q. Do you recall whether there was any conversation of Mr. Manash commenting on whether or not the machinists were affiliated with the A. F. of L. or not?

A. I don't recall any conversation. I wouldn't deny that there was because that would probably have been the bone of [63] contention; that would probably have been Mr. Manash's approach to it, so I wouldn't say that there wasn't, but I don't recall it, what the conversation was, if there were any. [64]

* * *

Q. Well, let me ask this: What would you say that Mr. Manash—or would you say that Mr. Manash at this time in Mr. Eggleston's office never mentioned that he had a contract for this job?

A. No. He may have mentioned it. [66]

* * *

V. J. EGGLESTON

a witness called on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Boyd:

Q. What is your employment, Mr. Eggleston?

(Testimony of V. J. Eggleston.)

A. I am the office manager of St. Johns Motor Express Company in Portland.

Q. Were you so employed throughout the year of 1947? A. Yes. [85]

* * *

Q. Now I hand you this document which is marked General Counsel's Exhibit 6 for identification, and ask you if you can identify the document?

A. Yes, this is the document.

Q. When you speak of "the document," you mean this is the letter, or an original carbon copy that accompanied your original letter that was addressed to Fry Roofing Company?

A. That is true, and this is my signature.

* * *

Trial Examiner Ward: General Counsel's Exhibit 6 for identification is received in evidence.

(Whereupon, the document referred to, having previously been marked for identification General Counsel's Exhibit 6, was received in evidence.) [90]

* * *

Q. (By Mr. Boyd): In your testimony you referred to the receipt of a purchase order from Fry Roofing Company responsive to the letter General Counsel's Exhibit 6. I now hand you this document, which for identification is marked General Counsel's Exhibit 7, and ask you to examine it and state whether you can identify it?

A. That is the purchase order.

(Testimony of V. J. Eggleston.)

Q. That is the purchase order received in response—

A. That is right.

Q. —to the letter of August 22nd?

A. That is correct.

* * *

Mr. Eagen: No objection.

Trial Examiner Ward: General Counsel's Exhibit 7 for identification is received in evidence. [91]

(Whereupon, the document referred to, having previously been marked for identification General Counsel's Exhibit 7, was received in evidence.) [92]

* * *

GENERAL COUNSEL'S EXHIBIT No. 7
Purchase Order

Lloyd A. Fry Roofing Company
Manufacturers
General Offices
5302 West Sixty-sixth Street
Chicago 38, Illinois

Order No. 1366

Issued by Portland, Oregon, Date, Aug. 26, 1947

To: St. Johns Motor Express Co.

7220 N. Burlington Avenue,
Portland, Oregon.

Ship to: Volney Felt Mills, Inc.

c/o Lloyd A. Fry Roofing Company,
3750 N.W. Yeon Avenue,
Portland, Oregon.

(Testimony of V. J. Eggleston.)

Terms: Net.

Description:

To Move and Place Felt Mill Machinery as Set Forth in Your Letter of August 22, 1947.

St. Johns Motor Express Company has insurance fully covering property damage and public liability.

LLOYD A. FRY ROOFING
COMPANY,

/s/ E. J. NELSON.

Received in evidence, Nov. 9, 1948.

Q. Do you remember what day it was that you first talked with Mr. Manash?

A. I don't recall exactly, but it was right around there.

Q. When he came to see you was he alone when he came? A. I believe so.

Q. Now will you relate in detail as you recall what it was that Mr. Manash said to you?

A. Well, as I recall, Mr. Manash claimed having a contractual relation between the union that he represented and the Fry Roofing Company in which he said that A. F. of L. people should be employed [100] on the job.

(Testimony of V. J. Eggleston.)

Q. May I interrupt you to inquire, Mr. Eggleston, did your company at that time have any contractual relation with the Building Trades Council?

A. None whatever.

Q. Or the Millwrights?

A. None whatever.

* * *

Q. (By Mr. Boyd): You may state in substance what he said to you, if you cannot remember the exact words, I think, but give us the exact words if you can. [101]

A. Well, it is impossible for me to give you exact words. Mr. Manash claimed a contract with the Fry Roofing Company, and he said that he was going to do something about it if the contract wasn't lived up to.

Q. What did he say he was going to do, the substance of it?

A. The substance of what he said he was going to do that the carpenters were going to be pulled from the job of the Volney Felt Mills building construction. [102]

* * *

Q. Going back to the conversation that you had with Manash and his statement to you of what he would do, what did you say in response to Manash's statement, as best you recall?

A. There wasn't much that I could say to Mr. Manash for the reason that it would be necessary, before I make any commitments at all, to anyone.

(Testimony of V. J. Eggleston.)

to consult with our principals, namely, Lloyd A. Fry Roofing Company.

Q. Well, did you do so? A. I did. [103]

Q. With whom?

A. I don't recall exactly with whom. I had several conversations with Mr. Baker and several conversations with Mr. Alexander, and at least one conversation that I recall with the two of them.

Q. As a result of those conversations or any of those conversations, did you decide, or were you instructed as to what you should do?

A. Well, we would have been instructed as to what we should do.

Q. Were you instructed? A. Yes.

Q. By whom and what was said?

A. Well, I called the Fry Roofing Company at any time, regardless of what came up of any significance whatsoever. I told the Fry Roofing Company people that Mr. Manash claimed a contract. I also told them that he threatened to pull the men from the job; that is, from the building. Their remarks were to me that they couldn't possibly stand having a work stoppage on that building because it was necessary to get a roof over their heads in order that the work could progress and that they get the machinery installed and the felt mill operating on a certain particular date, and their instructions were to—I mean eventually on the Tuesday, the same day, some few hours prior to that time—to let the machinists go and hire millwrights. As to why it was, it could have been due

(Testimony of V. J. Eggleston.)

to the fact that they [104] did have a contractual relationship, felt that they did, or the fact of the threat, or it could have been a combination of both. I don't know.

Q. Well, at that time did they make any reference to Fry Roofing having such a contract?

A. I am not sure about that one. I believe Mr. Baker was cognizant of the fact that there had been some correspondence between Mr. Fry and the building trades council some time previous to this erection. Now I don't know—— [105]

* * *

Q. Now do you recall whether on the occasion of your first meeting Mr. Jones was at a time when Mr. Manash was in your office?

A. At one time Mr. Manash and Mr. Johns did—were in my office together.

Q. You do not remember whether that was the first time that you met Mr. Johns?

A. I don't recall.

Q. During the course of that conversation in your office, what was the occasion of Manash being there, if you know? If you recall?

A. The occasion of Manash being there, of course, was to get millwrights on that job.

Q. And what did he say in that connection?

A. About the same sort of things that he had a contract and that they were entitled to the job and things of that kind.

Q. Do you remember whether at that time he

(Testimony of V. J. Eggleston.)

indicated what he would do in the event you did not replace the machinists with millwrights?

Mr. Landye: I don't care what he indicated; I want to know what he said.

Q. (By Mr. Boyd): Yes, what he said.

A. I can't tell you his exact words as to what he said, but the tenor of his conversation was the same at all times; that [106] he wanted the contract with them, he intended it to be kept, and if it wasn't going to be kept he was going to do something about it, namely, pull those men off of that job.

Q. That is what would have happened at the job, but did he say to you what he was going to do in relation to St. Johns Motor Express?

A. I asked him, as I recall, specifically what it meant to St. Johns in order that I could get all the information, and Mr. Manash said to me that it might—he didn't say that it would, as I recall—he says that it might reach the point where our teamsters could not deliver to jobs on which A. F. of L. carpenters were employed.

Q. Did he go no farther than to say that it might?

A. I believe that is right, that he didn't—that his statement on that was correct.

Q. Don't you have in your possession a letter that he handed you on that day citing you to appear before the Building Trades Council?

A. I believe we have a letter—now that may have been what he meant, that if the Building

(Testimony of V. J. Eggleston.)

Trades Council had taken—put us on the unfair list that is probably what would have happened. Frankly, I am not too familiar with the sanctions put on the business firms by unions.

Q. Well, were you not on that date of that conference when Johns—on the same date that Johns was there when Manash was [107] in your office, were you not handed by Mr. Manash this letter, which is marked General Counsel's Exhibit No. 10 for identification?

A. We received this letter from Mr. Manash. It is my impression that he handed this to me, that he brought it out. I don't want to be too conclusive on that because it is possible that it was mailed; but as I recall he handed this to me.

Q. By "this" you are referring to this marked General Counsel's Exhibit No. 10?

A. Well, there is no mark on it.

Mr. Boyd: Let it be so marked so that it may be specifically identified.

(Whereupon, the document referred to was marked General Counsel's Exhibit 10 for identification.)

Q. (By Mr. Boyd): You identify this as the letter you received from Manash? A. I do.

Mr. Boyd: We offer General Counsel's Exhibit 10 in evidence.

Mr. Landye: The Millwrights have no objection—I mean the Council.

Mr. Fagen: No objection.

(Testimony of V. J. Eggleston.)

Mr. Barzee: No objection.

Trial Examiner Ward: General Counsel's Exhibit No. 10 will be received in evidence. [108]

(Whereupon, the document referred to, having previously been marked for identification General Counsel's Exhibit 10, was received in evidence.) [109]

* * *

GENERAL COUNSEL'S EXHIBIT No. 10

Building and Construction Trades Council

Portland and Vicinity

410 Labor Temple

Portland 4, Oregon, August 29, 1947

St. Johns Motor Express Company

7220 N. Burlington

Portland, Oregon

Gentlemen:

We have a request from Millwrights Local Union No. 1857 to place your firm on the official Unfair List.

As we are always desirous of hearing both sides of any controversy, we respectfully request that you appear before the Board of Business Representatives at a meeting to be held on Tuesday, September 2, 1947, at 10:15 a.m., Hall J, Labor Temple, Portland, Oregon, to state your version of this controversy, at which time action will be taken on this request to place your firm on the Unfair List.

(Testimony of V. J. Eggleston.)

Trusting you will be present at this meeting, we are

Very truly yours,

BUILDING AND CONSTRUCTION TRADES
COUNCIL OF PORTLAND AND VICIN-
ITY,

[Seal] /s/ FRED MANASH,
Secretary.

Received in evidence Nov. 10, 1948.

Q. (By Mr. Boyd): Did you later receive another letter from Mr. Manash in relation to this controversy? A. Yes.

Q. And you have in hand that which will be marked for identification General Counsel's Exhibit No. 11. I ask you to state whether that is the letter to which you have referred in your answer?

A. That is correct.

(Whereupon, the document referred to was marked General Counsel's Exhibit 11 for identification.)

Mr. Landye: No objection.

Mr. Barzee: No objection.

Mr. Long: No objection.

Mr. Eagen: Mr. Examiner, I object to it on the ground it is a self-serving declaration by Mr. Manash to the effect that there was a contract covering the construction or the work being done by

(Testimony of V. J. Eggleston.)

St. Johns Motor Express, and there is no evidence here, at this time at least, that there was any such contract.

Trial Examiner Ward: Objection overruled. General Counsel's Exhibit 11 will be received in evidence.

(Whereupon, the document referred to, having previously been marked for identification General Counsel's Exhibit 11, was received in evidence.) [111]

* * *

Q. It is your recollection and your testimony that these men were terminated—the machinists were terminated on September 2nd. Do you recall what transpired on that day leading up to their termination?

A. Well, of course, we had a long series of discussions; I had a long series of discussions on these matters with Fry Roofing and Volney Felt Mills, and of course I also sought advice from our attorney, Mr. Scudder, on this to determine what kind of a position the St. Johns Motor Express Company had gotten themselves into. In other words, it looked to me like we were right in the middle, and of course we needed expert legal advice on that subject. I determined from Mr. Scudder that we were agents of Fry Roofing Company and Volney Felt Mills, and that if Volney Felt Mills or Fry Roofing Company told us to fire the machinists

(Testimony of V. J. Eggleston.)

and hire millwrights, that is exactly what we should do, and that was done. [113]

* * *

Cross-Examination

By Mr. Barzee:

Q. Now assuming, Mr. Eggleston, that in General Counsel's Exhibit 2, in which is incorporated Mr. Baker's deposition recently taken in Chicago, he stated in the course of that examination that he told you to employ Local 62, A. F. of L., men on this job. Would that assist you in refreshing your memory to the extent of saying that he did in fact so instruct you?

A. As I said before, I cannot recall that he did. However, it is altogether possible that that sort of a conversation took place.

Q. Then you wouldn't say that he didn't tell you that? A. Oh, no, no.

Q. Were you present at this hearing yesterday when a card presented by Mr. Johns was introduced in evidence? A. I was.

Q. Did that card come into your possession at any time? A. It did.

Q. In what manner?

A. The card was presented to me by Mr. [116] Taylor.

* * *

Q. (By Mr. Barzee): Mr. Eggleston, you have already testified that it was Mr. Manash's contention that there was a Building Trades contract?

(Testimony of V. J. Eggleston.)

A. That is right, with Fry Roofing Company or Volney.

Q. Yes. And these several conversations you had with Baker and Alexander were based upon that contention of an A. F. of L. contract, were they not?

A. Yes. I told either Baker or Alexander or both that Manash did claim a contract. [127]

* * *

Q. (By Mr. Landye): He was insisting that he had a contract for that job?

A. That is true, definitely.

Q. And the statement, as I understood you to say, was that if the contract wasn't carried out he would withdraw the building laborers from the general contract; isn't that correct?

A. That is right.

Q. And that general contract was by Lautermilch; he had that general contract, did he not?

A. I understand so, yes.

Q. In other words, what he was talking about was that he would withdraw the men who were working directly for Lautermilch, Campbell-Lowrie, whatever it is? A. That is right. [131]

Q. Those were the statements that you say he used?

A. That is the impression I got, general impression. [132]

* * *

Q. When did you first know, if you recall, that Mr. Manash was claiming a contract there?

(Testimony of V. J. Eggleston.)

A. Oh, not over two days after the actual hiring of the machinists.

Q. In other words, they were hired on a Tuesday and by Thursday you knew about Mr. Manash's—— [136]

A. I think they were hired on Wednesday, and maybe Wednesday night I knew that Manash was trying to get in touch with me. Maybe I didn't get in touch with him until Thursday or Friday.

Q. Well, it would be within a couple of days?

A. It was shortly thereafter. [137]

* * *

Cross-Examination

By Mr. Long:

Q. In the course of the operations of the St. Johns Motor Express Company, do they do hauling for construction projects, hauling to construction projects?

A. Well, we have a very large volume of business in construction projects involving the hauling of building materials of various kinds over the states of Oregon, Washington and Idaho, and I would say that the bulk of our business was building materials.

Q. The hauling of building materials?

A. Yes.

Q. In your conversation that you had with Mr. Manash on Friday the 29th you stated that some reference was made to what might happen to your operations—that is the St. Johns Motor Express

(Testimony of V. J. Eggleston.)

operations—if the machinists were continued to be employed upon this Volney Felt Mill job. How did that conversation arise; I mean that portion of the conversation?

A. I believe I asked Mr. Manash what would happen and he told me. [139]

Q. Would you mind repeating again the substance of what he told you?

A. As I recall, Mr. Manash says that the situation might develop into a situation wherein we would not be—our teamsters would not be permitted to deliver building materials, such as lumber and the like, to construction projects on which A. F. of L. carpenters were employed.

Q. Now if that contingency arose, it would materially affect your business?

A. Oh, definitely. [140]

* * *

DANIEL F. DONNELLY

a witness called on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Boyd:

Q. Mr. Donnelly, what is your usual employment? A. Machinist.

Q. Are you a member of any labor organization? A. Yes, sir.

Q. What?

(Testimony of Daniel F. Donnelly.)

A. International Association of Machinists.

Q. Which lodge? A. 63.

Q. How long have you been employed in the machinist trade? A. Twenty years.

Q. Did you at any time have any employment at the plant of the Volney Felt Mills where machinery was then being installed by Fry Roofing Company or Volney Felt Mills or both?

A. I did. [144]

* * *

A. Well, I learned it the day before, on August 26th. A call come to my home from the Machinists office that they had a job at the Fry Roofing Company and for me to report the following morning.

Q. Did you report the following morning?

A. I did. [146]

* * *

Q. Now when you began to work on that Wednesday morning, the specific operation in which you and the other three men were engaged was what? A. Setting machinery.

Q. How long did you continue in that work?

A. Continued in that work the rest of the week, which is the 27th, 28th and 29th; that was Wednesday, Thursday and Friday, and we didn't come to work on Labor Day, and we came back on a Tuesday.

Q. Now on Tuesday when you came to work, how many machinists were on the job?

A. There were three machinists and three helpers.

(Testimony of Daniel F. Donnelly.)

Q. That is, there were six men then altogether?

A. Six men.

Q. There had been originally four up until what time?

A. Until the following Tuesday morning.

Q. So it was on Tuesday that the number grew from four to six? A. Yes, sir.

Q. Do you know under what circumstances these other two men were taken on the job?

A. Yes, sir. [149]

Q. What was the name of these other two men that were taken on the job?

A. Mr. Bolton and Mr. Kesch.

Q. K-e-s-c-h? A. That is right.

Q. Is that correct? A. That is right.

Q. Under what circumstances, if you know, was it that Bolton and Kesch were hired on the job?

A. Mr. Taylor come to me and he says—

Q. On what day was it that he came to you, if you recall?

A. Yes, sir; it was on a Thursday.

Q. On Thursday?

A. Yes, sir. He came to me and says, "Donnelly," he says, "do you know where I can get another good machinist?" I said, "Yes, I do." I says, "I will call up a man and I will let you know tomorrow morning," which would be on Friday: and I called up this Mr. Bolton and told Mr. Bolton to go down to the Machinists Union and get his clearance and come out and see Mr. Baker—or Mr.—

(Testimony of Daniel F. Donnelly.)

Q. Taylor?

A. —Taylor, Mr. Taylor and he come out and saw Mr. Taylor the following morning, had a conversation with him, which I don't know what the conversation was, but I understood afterwards he told Mr. Bolton to report to work on a Tuesday morning. [150]

Q. And Bolton did report to work on Tuesday morning? A. He did.

Q. Was there another man?

A. Well, there was a helper, which I didn't know anything about the helper, which the helper come through the hall.

Q. Came through the hall so far as you know?

A. So far as I know.

Q. You didn't know of the circumstances of Bolton contacting him? A. No, I didn't.

Q. Kesch, the helper?

A. No, I did not know.

Q. Now did anything bearing upon your termination occur on the first day that you worked there, on Wednesday?

A. Wednesday? No, there was nothing at all; everybody was working.

Q. All right. Now did anything occur on Thursday, the second day of your work?

A. On the second day there was a business agent I understand come down from the Millwrights Union.

Q. Do you know that man's name?

A. I believe Mr. Sunstrom.

(Testimony of Daniel F. Donnelly.)

Q. Sandstrom? A. Sandstrom.

Q. All right. What occurred? [151]

A. Well, he was around there talking for quite a while, which I didn't pay any attention to.

Q. With whom was he talking?

A. He was talking to Mr. Taylor.

Q. The foreman? A. The foreman.

Q. All right.

A. And after Mr. Sandstrom left, Mr. Taylor says to me, he says, "Do you know that man?" I says, "No, I don't know that man." He says, "That is the business agent for the Millwrights Union, and it seems he is coming down here to have you fellows put off the job and hire millwrights." And so I says to Mr. Taylor, "Well, I think I should go and call my local up and give them the information." which I did. I asked Mr. Taylor where the telephone was, and it was over in the other building. He give me the time to go over and called up my representative and have him come down to the plant.

Q. Now did you put in that phone call?

A. Yes, sir. [152]

* * *

RAY BAKER

a witness called on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

(Testimony of Ray Baker.)

Direct Examination

By Mr. Boyd:

Q. Mr. Baker, you say that you have no initial?

A. That is right.

Q. And the reference to you in the complaint as R. E. Baker is incorrect then?

A. That is incorrect.

Q. Your name is Ray Baker? [160]

A. Ray Baker, yes, sir.

Q. What is your customary employment?

A. Well, machinists helper.

Q. And are you so employed now?

A. Yes, sir.

Q. How long have you been engaged in that trade or craft? A. I would say ten years.

Q. Were you employed on the job at the Fry and Volney plant? A. Yes.

Q. In August of 1947? A. Yes, sir.

Q. Do you remember on what day in the week you began? A. August 27th. [161]

* * *

Q. Did anything occur on Tuesday to your knowledge as bearing upon your employment or termination? A. No.

Q. When did you first learn that you were terminated? [163] A. Wednesday morning.

Q. And in what way did you learn about that?

A. Well, Tuesday afternoon, I knew some of the millwrights and I saw them down there, and I said to one of them, I said, "Well, what are you doing

(Testimony of Ray Baker.)

down here?" "Well," he said, "we are coming down to run you off of the job." The next morning was Wednesday morning, and when I went to work I seen them in there.

Q. Did you have any conversation with Mr. Taylor? A. Not right then.

Q. Did you later in the morning?

A. Well, not until he come and told us that we were through.

Q. That is what I wanted to find out; what was it that he told you?

A. He said, "Well," he said, "I have got to lay you fellows off," he said, "I didn't get to see you last night," he said, "you got away before I seen you," and he said, "I have got to lay you off," he says, "I hate it but," he says, "that has got to be done."

(Recess.) [164]

* * *

Trial Examiner Ward: Any further remarks? The ruling of the Examiner will be that counsel for the Council and the Millwrights may be permitted to amend his answer by the filing of the so-called third affirmative defense.

Mr. Landye: That is correct, for a third further and separate answer.

Trial Examiner Ward: The Examiner, following the decisions of the Board, does not assume to pass upon the constitutionality of the labor management act. On the contrary, he, along with the Board, presumes that it is constitutional until such time as

(Testimony of Ray Baker.)

some court with the jurisdiction and authority to pass upon it says to the contrary. The Examiner understands its chief purpose of filing this third defense is to, at the first opportunity, indicate that the Council questions the constitutionality of the act, and it is the opinion of the Examiner that the pleading will be sufficient for that purpose. [180]

* * *

B. B. ALEXANDER

a witness called on behalf of the Respondents Fry and Volney, being previously duly sworn, was examined and testified as follows: [181]

Direct Examination

* * *

By Mr. Barzee:

Q. You had conferences with him, did you not, in regard to his assignment in Portland and relating to matters affecting the installation of the machinery in the Volney felt mill? A. Yes, sir.

Q. And did he impart to you what his instructions were from his superiors?

A. Well, his instructions were to supervise—or under his direction to set the machinery in the felt mill building when and as the building was sufficiently progressed to start assembling and setting the machinery.

Q. Did he indicate to you what his instructions were, if any, regarding the employment of labor for the machinery setting? A. Yes, sir.

(Testimony of B. B. Alexander.)

Q. And will you state just what he told you in that regard?

A. He told me that his instructions were to see that the machinery was set by A. F. of L. Union 63.

Q. Where did that conversation take place?

A. Took place in the office.

Q. Office in the Fry Roofing Company building?

A. Yes, sir.

Q. Do you recall any circumstances, other circumstances, at that time which focused your memory clearly as to that remark about A. F. of L. labor?

A. Well, I remember that Mr. Baker had a memorandum he took out of his pocket and said, "Here it is," and read it to me. [183]

Q. (By Mr. Barzee): And while he was referring to the envelope you mentioned, was that at the moment that he stated that his instructions were to hire Local 63 A. F. of L. men? [184]

A. Well, his instructions were to see that A. F. of L. 63 men were employed on the job. [185]

* * *

Q. And just to shorten this up, that conference resulted in the ultimate hiring of St. Johns Motor Express for this work? A. Yes, sir.

Q. Now when was the next conference relating to the employment of men, if there was such, that you recall, at which you were present and in which Mr. Baker took part?

A. Well, the next conference that I recall was of Mr. Baker and myself discussed the matter with either Mr. Eggeston or Mr. Larsen, I am not clear

(Testimony of B. B. Alexander.)

on which one that we talked to first, outlining what we wanted done.

Q. Mr. Larsen being the owner of the St. Johns Motor Express?

A. Yes, sir. I called Mr. Larsen, and I am not sure whether Mr. Larsen came to our office or whether Mr. Eggelston came; I am not clear on that.

Q. Was the conversation in your office?

A. Yes, sir.

Q. Can you state for a fact that Mr. Eggelston was there?

A. Mr. Eggelston was there later. I wouldn't say the first conference that Mr. Eggelston was there, but later at a second conference when we really got down to business on it Mr. EGGLESTON was there.

Q. Then to shorten this, your testimony is that either Mr. [187] EGGELSTON or Mr. Larson was present; is that correct? A. Yes.

Q. And what was said at that time regarding the employment of men, if anything?

A. Well, we outlined to the St. Johns Motor, Mr. Larson and Mr. EGGLESTON both, there was two conferences, that we wanted the work done on this basis of cost plus due to the fact that no one could probably give a firm figure on it, and that we wanted it done with union labor and that we would want A. F. of L. 63 union men employed on it.

Q. Was mention made of a contract calling for A. F. of L. men at that time?

(Testimony of B. B. Alexander.)

Mr. Eagen: Just a minute. Will you read the question, Mr. Reporter?

Trial Examiner Ward: Read the question.

(Last question read.)

A. I don't think any specific contract was mentioned that time other than Mr. Baker had instructions from our general office as to the men he was to use.

Q. Do you recall the date of the completion of the setting of this machinery?

A. No, I do not recall the date of completion. It was prior to the 26th of January. I do recall that our mill started turning over on January 27th and we were making felt on the 28th. The completion was, I would say, several days prior to that, [188] some days prior.

Q. Two or three days prior, would you say?

A. Yes.

* * *

Cross-Examination

By Mr. Landye:

Q. I want to ask a few questions along the Examiner's line for a minute. I want to get this, Mr. Alexander, if you will help me now; excuse my ignorance on this. Prior to that time the Fry Roofing Company had one factory down here, isn't that correct? A. Yes, sir.

Q. And the purpose of that factory, as I take it, was to just manufacture roofing paper, isn't that correct? A. You mean the original factory?

Q. Yes.

(Testimony of B. B. Alexander.)

A. It was manufacturing—fabricating and manufacturing a complete line of roofing.

Q. Complete line of roofing?

A. Yes, sir; asphalt roofing.

Q. Now this building that you erected for the Volney Company, what was the purpose of that building?

A. That was to make the dry felt on which asphalt roofing is [189] made; the dry felt is saturated, coated and processed with asphalt.

Q. Now who owned—I want to get back, I don't think the record covers this—Volney Felt Mills would own this new place, would they not?

A. Yes, sir.

Q. But Fry Roofing Company would own the one that you had for making the roofing; is that correct?

A. That is right.

Q. However, Volney Felt Mills, as I understand it, is a wholly-owned subsidiary of Fry, is it not?

A. I think so.

Q. There is connections there? A. Yes.

Q. Now this building for the felt mill that Volney was building, how far was that located from the Fry plant?

A. Well, there is just room for a railroad switch between the two buildings; there is a rail switch that comes in between the two. I would say from one dock to the other there would be probably 25 feet, maybe 28 feet. There had to be a certain amount of clearance there for a railroad switch, whatever that is.

(Testimony of B. B. Alexander.)

Q. I think you probably testified to this, but when did the original construction start; I mean the clearing of the land for this new place? I believe you testified once. [190]

A. That was early in '47.

Q. That would be what, April or May or something?

A. No, I think probably it might have been in February or March.

Q. February or March? A. Yes.

Q. And then this plant—I am talking about the Volney plant, the one we are involved in here——

A. Yes, sir.

Q. ——it didn't actually start the manufacture of this felt until, you say, January the 27th or 28th?

A. The mill started—we started turning the mill over on the 27th before we undertook to put any material through it; it ran for several hours empty, and we began to bring off felt on the morning of the 29th. We run continually 24 hours, and we finally brought off a perfect sheet of felt early in the morning of the 29th.

Q. So there, of course, was no manufacturing of any kind going on during August and September of 1947 in this particular plant? A. No, sir.

Q. The first day you ever started to manufacture was February 27th or 28th, the time you spoke of?

A. That is right.

Q. Now prior to this time you, as I understand—and correct [191] me if I am wrong—had brought the felt in from other places; isn't that correct?

(Testimony of B. B. Alexander.)

A. Yes, sir.

Q. Now this machine and all this work that was done, this machine installation work that we are talking about, that was on the main machine, is that correct, that you brought in? It is like a press or something of that nature, is it not?

A. Well, a felt machine is made up of many—

Q. Many parts, it isn't just a simple machine; I understand that. It is very complicated and made of many parts.

A. Yes, sir.

Q. But that was the work that these men did, isn't that right? The installation of that machine.

A. That is right.

Mr. Landye: I think that is all.

Cross-Examination

By Mr. Long:

Q. Mr. Alexander, when did you first—when were you first made aware of the dispute that had arisen regarding this hiring problem?

A. Well, I think the first I knew of it was probably—I don't know whether it was Thursday or Friday, the latter part of August it was mentioned to me.

Q. Do you recall who called it to your attention, who brought it to your attention?

A. Yes, it was brought to my attention by Mr. Baker, who was [192] in charge of the felt mill, and also by Mr. Norling, who was superintendent of the construction of the building.

Q. Were you advised at any time by Mr. Eggels-

(Testimony of B. B. Alexander.)

ton or any other representative of St. Johns Motor Express, regarding the situation and what had developed in the conference with Mr. Manash and Mr. Johns?

A. Yes, I discussed that over the phone with Mr. Eggeston. In fact, he called me and told me there was some difficulties that were arising. I am not sure whether Mr. Eggeston—I think maybe he called immediately after Mr. Baker had told me that there was some difficulty; I am not just clear on that. It all happened with the matter of a few days.

Q. I realize that. Did Mr. Eggeston request instructions from you as to how he was to proceed in any of these conversations?

A. Well, yes, I think that was discussed between—it was discussed between Mr. Eggeston and myself.

Q. Can you recall any of the conversation, or the substance of the conversation at that time?

A. Yes. When it was determined—when we found that we had perhaps the wrong union membership on the job from what we thought we had, and in view of the fact that that matter had become serious in tying up all of the work and we had made an honest mistake in employing probably the wrong people, the best thing to do was to get the people that we had intended [193] to have.

Q. Did you advise Mr. Eggeston as to what should be done?

A. Well, yes, I think that was the decision we arrived at.

(Testimony of B. B. Alexander.)

Q. What did you tell Mr. Eggelston at that time to do then?

A. Well, I am not sure that I told Mr. Eggelston to do anything. The matter was discussed with me, but I think Mr. Baker may have told Mr. Eggelston or Mr. Taylor. I am not sure which, one of the two, Mr. Baker again was in charge, that would be in his hands, he was on the job constantly.

Q. Were you present on any occasion when Mr. Baker gave instructions with reference to employment to Mr. Eggelston after this dispute arose?

A. No, no, I don't believe I was; I don't remember that I was.

Q. Did Mr. Baker discuss with you what he had told Mr. Eggelston he ought to do with reference to employment?

A. No, I don't believe that he discussed with me what he had told anyone about it. Mr. Baker and I didn't discuss the situation between ourselves originally.

Q. And he felt the same way as you did about it, that something should be done? A. Yes.

Q. What do you mean by "something should be done"?

A. Well, if we—in having a certain union or trade union which was different from what we thought we had, we decided [194] we better get the one that we originally thought we were getting.

Q. In other words, that the millwrights should be employed instead of the machinists, to make it very specific?

(Testimony of B. B. Alexander.)

A. Yes, sir. To employ workmen from the A. F. of L. Building Trades Council, whatever the name of it was. We had previously discussed the matter, I think, but I wasn't there.

Q. Did Mr. Eggelston apprise you of his conversation with Mr. Manash with reference to the possibility of the carpenters being taken off the job if the machinists were continued on in their employment?

A. As I remember it, Mr. Eggelston did mention that, and I was also informed through Mr. Norling, who was the superintendent in charge of the building construction.

Q. Did you make any comment to Mr. Eggelston in that connection?

A. I don't remember that I did. [195]

* * *

Q. Now is it not a fact that the decision to employ the machinists, when that decision was made in your conversation with Baker early in '47, stemmed from a, we will call it, unfortunate experience two or three years before when, at this same plant, production workers were used to install machinery over the objection of the machinists represented by Mr. Manash at that time? Isn't that correct?

A. That is correct; in the roofing plant, that is correct.

Q. And isn't that the very reason why specific orders went down to Baker, be sure and hire machinists on this job?

(Testimony of B. B. Alexander.)

A. I wouldn't say that was the fact; I don't know.

Q. Well, you say that Baker did get the specific instructions—

A. That is right.

Q. —to hire machinists on this job?

A. That is what Mr. Baker told me and had a memorandum to that effect. [200]

Q. Now then after the machinists were on the job, in the latter part of that same week, you testified—and it is at that point I want to pick up the sequence—you first learned of this circumstance of the millwrights protesting the employment of the machinists from Baker and from Norling, didn't you?

A. Yes, sir.

Q. Now Mr. Norling, who is identified in the deposition but from you I want to get it clear, he was the superintendent in charge of the construction company, that is the construction company being Campbell-Lowrie-Lautermilch Corporation, and their superintendent in charge was Norling?

A. Yes, sir.

Q. Isn't that correct?

A. That is right.

Q. Nor Mr. Norling reported to you and Baker what? What was his report of what had happened?

A. Mr. Norling reported to me that he had been advised by Mr. Manash that unless the machinists union that was at work on the machine, unless they were taken off, that the work on the building would be stopped.

Q. That the construction carpenters would be pulled off the job unless the machinists were taken

(Testimony of B. B. Alexander.)

off the job of installing machinery?

A. That is right. [201]

Q. Isn't that correct? A. Yes, sir.

Q. And at that time was there any comment by Norling to the effect that the Campbell-Lowrie-Lautermilch Corporation had a contract with the Building Trades Council that the work on the construction job should be done by A. F. of L. members, or members of the Building and Construction Trades Council? A. Yes.

Q. And you knew that of your own knowledge?

A. Yes, sir.

Q. And Norling referred to it? A. Yes.

Q. Now at that time you were not a party to that contract, were you, your company?

A. No, sir.

Q. Nor were you a party to any contract with the machinists at that time, were you?

Mr. Landye: Just a minute. All right, go ahead.

Mr. Boyd: Read the question back.

(Last question read.)

Q. (By Mr. Boyd): Were you, to hire machinists? A. That is right.

Q. You had no labor contract?

A. No. [202]

* * *

Q. Well, actually you do know that the cost of construction of the building, the superstructure, that was ultimately charged up to Volney Felt Mills?

A. Yes, sir.

(Testimony of B. B. Alexander.)

Q. But the land on which the building is situated is the land of Fry Roofing Company?

A. It was originally owned by the Fry Roofing Company, and [204] may be so owned yet; I wouldn't know as to that. That is a matter of their records in their general office as to how they hold the property.

Q. The operations that take place in the Volney Felt Mill plant, as you describe, is the manufacture of roofing paper felt? A. Dry felt.

Q. Dry felt. And that manufactured felt then moves across to the Fry Roofing Company plant and is manufactured into roofing?

A. A portion of it.

Q. A portion of it moves over there. So you have, in effect, the production of one of the ingredients of your end product made in the Volney felt mill, and then it is processed further over in the Fry Roofing plant to produce the product that you sell?

A. That is right.

Q. The over-all size of that building, could you give us that, Mr. Alexander? I refer now to——

Q. It is 150 feet wide, I think, by, oh, approximately 400 feet long.

Q. Would it refresh your recollection, 480 feet long? A. 480 feet long is right.

Q. It is a one-story with a basement?

A. Yes, sir, a basement under part of it. [205]

Q. And it is separated from the building of Fry Roofing Company by this one railroad track that comes off the spur?

(Testimony of B. B. Alexander.)

A. Yes, that is right. [206]

* * *

Q. Was that the thing that decided you then to direct that the machinists be taken off the job and the millwrights put on?

A. The thing that decided me was the fact that we found that we had in our employ a different union from what we had expected to have, or that we had——

Q. Well, Mr. Baker, you say. had instructions to employ machinists from Lodge 63, didn't he?

A. A. F. of L.; that was specifically mentioned.

Q. You think it turned on the A. F. of L. and not the machinists Lodge 63?

A. It was A. F. of L. Lodge 63 was the information Mr. Baker——

Q. Well, you got machinists from Lodge 63, didn't you? A. Yes.

Q. And it was formerly an affiliate of A. F. of L.; isn't that correct?

A. I understand, but not then. That was the cause of the trouble.

Q. At that time Fry Roofing Company and Volney Felt Mills, as you testified, was under no contract or obligation to hire [207] any member of the A. F. of L., were they?

A. I wouldn't know about that.

Q. You just got through testifying earlier you knew of no contract.

A. I don't know of any contract. [208]

* * *

JAMES A. TAYLOR

a witness called on behalf of the Respondents Fry and Volney, [211] being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Barzee:

Q. What is your occupation, Mr. Taylor?

A. At present?

Q. Yes. What is your general line of work, I mean?

A. Oh, truck driving, machinery erecting.

Q. For whom were you employed during the months of August and September, 1947?

A. St. Johns Motor Express.

Q. What, if anything, did you have to do with that company's work for Volney Felt Mills?

A. I had full charge of their operations over there.

Q. In other words, you were the Volney superintendent at the Volney plant—the St. Johns superintendent at the Volney plant?

A. That is right.

Q. About when did you go over there in that capacity?

A. Oh, I would say—oh, I don't know the month. I would say September, '47.

Q. Could it have been in August?

A. Well, it was when they started to assemble machinery at the Volney plant.

Q. To whom did you look for instructions?

A. Mr. Baker.

(Testimony of James A. Taylor.)

Q. And Mr. Baker who has been mentioned here as the Volney [212] engineer in charge?

A. That is right.

Q. And was Mr. Baker there on the job when you came over to work there?

A. That is right.

Q. And did he give you instructions regarding the employment of workmen for the setting of the machinery?

A. He did. I would say it was a couple days previous to the start of the job we talked with him and he said we would have to use—I asked him, I says, “Now I am a stranger with setting this kind of machinery. What craft will we have to use?” And he says, “It will have to be Machinists 63, A. F. of L.” He says, “You contract—you contact the men and have them out here.” So I did. I called the Labor Temple, which I thought was the right place, and I asked for Local 63 Machinists Local and I ordered the men out.

Q. Was it your intention to order A. F. of L. men?

A. That is right, and I didn't think there was anything but A. F. of L. in the Labor Temple. I never knew there was two or three different crafts—I mean different organizations in the A. F. of L. Labor Temple.

Q. This record shows that in response to that call four men were first employed. Is that your recollection?

A. That is right.

(Testimony of James A. Taylor.)

Q. And are you the party that made a further call that increased [213] that crew to six machinists? A. I am.

Q. Do you recall a controversy arising a few days later regarding the employment of these men?

A. I do, yes.

Q. From whom did you first hear about that?

A. From Mr. Eggeston.

Q. And what did he tell you?

A. He told me I hired the wrong craft over there, that they didn't belong to the A. F. of L.

Q. Tell the rest of the conversation.

A. I said, "I don't believe I did. I have a card from their business representative, it says 'Affiliated with the A. F. of L.'"

Q. Do you remember who gave you that card?

A. Mr. Johns, I believe.

Q. I will hand you Respondents F. & V. Exhibit No. 1 and ask you if that is the card that was handed to you by Mr. Johns? A. That is the one.

Q. And what did you do with that card thereafter?

A. I—when I first got the card I took it home, like you will pull them out of your pocket and throw them down. When I told Mr. Eggeston that I had had a card that said "Affiliated with the A. F. of L.," he says, "Where is it?" I says, "It is home." He says, "Go get it." I went and got it. The wife happened to save it; most generally she burns up that junk I [214] throw out of my pocket, but this is one that happened to lay back.

(Testimony of James A. Taylor.)

Q. I take it then that you gave it to Mr. Eggelston?
A. I did.

Q. What happened next in regard to the controversy?

A. Well, the business representatives from the millwrights and from the machinists both came over there.

Q. Over where, now, you mean?

A. The Volney felt mill. I told them that I didn't know; I thought I was handling the right craft there. The best thing for them to do would be go over and thrash it out between themselves, which I made an appointment for them to go over to Mr. Eggelston's office.

Q. Do you know if they went there?

A. I do not know for sure.

Q. What happened next as far as you do know?

A. Well, as far as—the next thing that I know was I got a call over there, Mr. Baker came out about, I would say, 4:30 in the evening and said, "We will have to change crafts, as bad as I hate to do it."

Q. Did he give you some instructions about changing crafts?

A. No, he did not. He says, "We will have to"—he says, "It is a case of either changing crafts or stopping all our building."

Q. Was something said about the carpenters being pulled off [215] of the building work?

A. The superintendent of the building construction told me—

(Testimony of James A. Taylor.)

Mr. Landye: Just a minute. I am going to object to any hearsay that is not binding on my client.

Trial Examiner Ward: Overruled.

Q. You may answer. What did the building superintendent tell you?

A. The superintendent told me that if there wasn't a change made that all of his men would be pulled off the job.

Q. The testimony here shows that that superintendent's name was Eric Norling. Is that your recollection of the man that you talked to?

A. That is right.

Q. Now getting back to the statement by Mr. Baker that you would have to change crafts, did you do something about changing crafts?

A. I did.

Q. What did you do?

A. I laid the men off that night. There was one of them already gone before I could get to him, and then the rest of them I told them that that was all, and that if they felt that it was deserving they could have two hours time the next day for picking up their tools. [216]

* * *

Cross-Examination

By Mr. Landye:

Q. Just one question. You had a conversation with Mr. Manash; that is the gentleman that is seated down at the back. You remember him?

A. I met him, yes.

(Testimony of James A. Taylor.)

Q. Do you remember telling him when he came out to see you that these men were all A. F. of L., as far as you knew?

A. I do not remember. As far as I knew, yes.

Q. Do you remember making a statement to Mr. Manash? [217]

A. That I figured they was A. F. of L., yes.

Q. And where did you—why did you make that statement? Where did you get the idea that they were all A. F. of L.?

A. From the card that I had already got from Mr. Johns.

Mr. Landye: I see, from the card. I think that is all. [218]

* * *

Q. (By Mr. Landye): August 25th is Monday, the 26th is Tuesday, the 27th is Wednesday, if I can help you out. In any event, it would be the day previous that Mr. Donnelly and the other three men started to work that you called the Labor Temple and got Local 63; isn't that correct?

A. That is right.

Q. Whatever the date may be.

A. That is right.

Q. And it was your intention, as I take it, that you were going to hire exclusively members of that union; isn't that correct? A. Yes.

Q. For that job? A. A. F. of L.

Q. But that particular union you called, it was your intention [224] just to hire members of that union?

(Testimony of James A. Taylor.)

A. I called the Labor Temple, just as I would for a carpenter or truck driver or anything, and I asked for Local 63.

Q. And for them to supply you union members?

A. That is right.

Q. And union members only, is that correct?

A. That is right.

Mr. Landye: That is all.

Trial Examiner Ward: Anything further of this witness? You are excused, Mr. Taylor.

(Witness excused.)

Trial Examiner Ward: Call your next.

Mr. Barzee: If the Examiner please, reserving the right to move for dismissal, I rest. That is all our witness, in other words.

Trial Examiner Ward: Counsel for the Council and the Millwrights may proceed.

Mr. Landye: I have a formal matter I can take care of at the close of the hearing. I will get it now. On the answer the Examiner has already ruled was to be stricken, but I wish to amend it, if I may, subject to being stricken, where in Paragraph III on page 4, "the first part of September, 1947, the exact date of which is unknown to these answering respondents, respondent St. Johns Motor Express Company entered into an oral agreement with Machinists"— [225]

Trial Examiner Ward: Wait until I get caught up with you.

Mr. Landye: All right. Page 4 of my answer, Paragraph II, on the fourth line I say, "the exact

(Testimony of James A. Taylor.)

date of which is unknown to these answering respondents, respondent St. Johns Motor Express Company"—I wish also to add in "and the respondents Lloyd A. Fry Roofing Company and the Volney Felt Mills, Inc." Down below—

Trial Examiner Ward: Just a moment; the Examiner hasn't caught up with counsel.

Mr. Landye: Page 4, Paragraph II, I wish to insert the words, after the words St. Johns Motor Express Company, "the Fry Roofing Company, Inc., and the Volney Felt Mills, Inc."

Mr. Boyd: You mean the Lloyd A. Fry Roofing Company?

Mr. Landye: Well, the Lloyd A. Fry Roofing Company. And down below, in Paragraph III, where on the second line of Paragraph III it says, "the St. Johns Motor Express," I wish to put St. Johns Motor Express and add in the names again of the Lloyd A. Fry Roofing Company, a corporation, and the Volney Felt Mills, Inc., a corporation.

Trial Examiner Ward: Do you wish to strike the word "Company" out of St. Johns Motor Express on the second line of Paragraph III? You omitted it in reciting it.

Mr. Landye: St. Johns Motor Express Company is the correct name, sir, I thought.

Trial Examiner Ward: You didn't include the word "Company"? [226]

Mr. Landye: Oh, no, I am sorry, sir; I wish to leave it the St. Johns Motor Express Company, and adding in the other two respondent companies,

(Testimony of James A. Taylor.)

Volney Felt Mills, Inc., a corporation, and the Lloyd A. Fry Roofing Company, a corporation.

Trial Examiner Ward: Any further motion to amend; that is your motion?

Mr. Landye: That is my motion to amend my complaint to conform to the proof.

Trial Examiner Ward: Any objection?

Mr. Boyd: I object: The matter pleaded is not properly pleaded. We cannot at this time pursue the alleged or asserted unfair labor practices of Lloyd A. Fry Roofing Company or Volney Felt Mills, Inc., nor could we that of St. Johns Motor Express Company upon the answer—this affirmative answer of respondents Council and Millwrights.

Mr. Landye: Your point is you are making the same objection made before to strike the answer?

Mr. Boyd: Yes.

Mr. Landye: But do you have any objections as to its timeliness?

Mr. Boyd: I don't have any objection to the timeliness, but I have objection to its being allowed, because allowance of the amendment would be inconsistent with the ruling made originally.

Trial Examiner Ward: Any further comment by other counsel? [227] The Examiner is going to permit the amendment. This matter already has been stricken by the Examiner, but in the event the Examiner is in error in striking it, it will be permitted in so that counsel will not be deprived of any rights that he should have in the event the Examiner is in error.

(Testimony of James A. Taylor.)

Mr. Boyd: Then by the Examiner's ruling, I understand that he is allowing the amendment as requested, but he will strike the amended answer as it stands after amendment?

Trial Examiner Ward: That is correct. It will be included in that portion of the answer heretofore stricken.

Mr. Boyd: Very well.

Trial Examiner Ward: Call your witness.

Mr. Landye: I will call Mr. Manash.

FRED H. MANASH

a witness called on behalf of the Respondents Building Trades Council and the Millwrights, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Landye: [228]

* * *

Q. All right, Mr. Manash, will you tell us what the background is?

A. Mr. Lautermilch, who was a member of the firm Campbell-Lowrie-Lautermilch Corporation, came into the office of the Building Trades Council some time during February and stated that he had a contract from the Fry Roofing Company to build a plant here and he wanted to get straightened out with the Building Trades Council here as he was a—his firm always had contractual relations with the American Federation of Labor building trades unions in Chicago and he wanted to have such a re-

(Testimony of Fred H. Manash.)

relationship with us here, as he always had hired union men and he wanted to continue so and make the same arrangement here. We then had a conversation with him to the effect that he would have to sign an agreement with the Building Trades Council, and we apprised him of the fact that we had trouble with the Fry Roofing Company before on a construction job and that we wanted the job in its entirety, including the installation of machinery to be done under the jurisdiction of the Building Trades Council. He stated at that time that he didn't know whether or not all the installation of the machinery would be within his contract. We told him that it would be necessary, before we would approve of the agreement signed with [232] him, getting assurances from the Fry Roofing Company that all the installation of the machinery in the plant will be done under our jurisdiction.

Q. Now specifically, under your jurisdiction, were you thinking about the installation too of the machinery?

A. Installation of the machinery.

Q. That would be under the jurisdiction of what local?

A. Of the Building and Construction Trades Council.

Q. But under the jurisdiction of what particular local was the machinery erected?

Mr. Boyd: Are you testifying for your witness, or would you let him testify?

(Testimony of Fred H. Manash.)

Mr. Landye: Oh, I will withdraw it. You go ahead, Mr. Manash.

Mr. Boyd: It is much better that way.

Trial Examiner Ward: Proceed.

A. We then—he then signed an agreement with the Building Trades Council on February 21st, which we held, did not approve of at that time, and he stated that he was going back to Chicago and confer with Lloyd A. Fry about the installation of the machinery in the plant. We later received this letter from him.

Q. When you say “this letter,” are you speaking of the letter——

A. Of March 7th, 1947. [233]

Q. Which is Exhibit 2.

A. Agreeing that the Company had agreed with him that any installation of the machinery installed in that plant would be done under the jurisdiction of the Building and Construction Trades Council.

Mr. Boyd: I object to the last part of the answer for a further and additional reason: The witness now is assuming to tell the Examiner what the letter says. The letter speaks for itself.

Trial Examiner Ward: The portion of the witness' testimony in which he states a legal conclusion may be stricken. The letter will speak for itself.

Q. (By Mr. Landye): Now, Mr. Manash, after you received the letter, what was the next thing you heard about this matter?

A. Well, the job proceeded.

(Testimony of Fred H. Manash.)

Q. The job started?

A. Started and proceeded in accordance with our agreement. The latter part of August, 1947, I was notified by—

Q. You mean '47; I thought you said '27.

A. I said '47. I was notified by the business agent of the Millwrights local union that on the installation of machinery at the Lloyd A. Fry plant that they were not hiring members of his organization in accordance with the agreement we have on that project.

Q. What did you do then, sir? [234]

A. I ascertained who was the company who had the contract for the installation of the machinery, St Johns Motor Express. Checking up the company I found the company had an agreement with an affiliate of the Building Trades Council, with the Teamsters Union, and recorded as a union firm with the Building Trades Council. I put in a call to the company, I don't know who I talked to: somebody answered the phone, I don't remember him identifying himself, but I asked him what is the status of the job, and told him who I was and explained my reasons for calling up, the fact that I had received a complaint from the Millwrights Local Union—Millwrights and Machine Erectors Local Union business agent to the effect that he was hiring other than their members on that job, and I explained to him at that time we had a contract on the job and they should be all members of the American Federation of Labor working on the job,

(Testimony of Fred H. Manash.)

and it was my understanding that these men working on the job weren't members of the American Federation of Labor. [235]

* * *

Q. Now go ahead, Mr. Manash; I interrupted you.

A. I am not certain exactly what the conversation was, but I think it was to the effect the party I talked to thought that the men worked on that job were members of the American Federation of Labor and he could see no reason why he should remove them. And I then received a letter from the Millwrights local union addressed to the Building Trades Council requesting that the St. Johns Motor Express Company be placed on the unfair list, and when we receive such a letter from a local union we then investigate, or at least we attempt to investigate the status of the job where the complaint is made, and in accordance with that I went to the job next day in the morning. [236] I think it was Friday morning, I am sure it was Friday morning, and I, along with the business agent of the Millwrights and Machine Erectors Union, and checked the job. I talked to—I think it was Mr. Taylor and Mr. Baker that was there, and introduced myself, and said I was there investigating a complaint that they were hiring men on the job who were not affiliated with the American Federation of Labor, and they told me that as far as their knowledge was concerned these were American Federation of Labor members and said that they had

(Testimony of Fred H. Manash.)

looked at their union cards and stated that they were members of the American Federation of Labor and they couldn't see where they were violating anything. I stated that I thought that that was a violation of the agreement that we had for that particular project. We then left the job, and the business agent of the Millwrights and Machine Erectors Local Union had another job to do and he went on that particular job, and I went over to St. Johns Motor Express Company's office and I met with Mr. Edlefson—

Q. Eggelston.

A. —Eggelston, and discussed the matter with him. I introduced myself to him; I explained that I had received a complaint from the Millwrights and Machine Erectors union to the effect that he was hiring men who were not affiliated with the American Federation of Labor on that job, and that that was a violation of the agreement that we had for that project. He [237] stated that it was to his knowledge that these men were affiliated with the American Federation of Labor and he didn't think that he was violating any agreement; he said these men were affiliated with the American Federation of Labor to his knowledge and it was his understanding, he says, when they hired men on that job they called up the Labor Temple, A. F. of L. Labor Temple and asked for Machine Erectors, they were connected with the proper union, he thought, and he put in the order, that the men were the proper men for the job. I explained to him that they had called the Machinists Local Union, who were not affiliated

(Testimony of Fred H. Manash.)

with the American Federation of Labor, and he differed with me; he said he thought that they were affiliated with the American Federation of Labor and he stated that to his knowledge they were and he thought I was wrong. I said, "Well," I says, "I know definitely they are not." I said, "The best way to settle this argument was to get in touch with the business agent of this Machinists Union and ascertain from him definitely whether or not they were affiliated with the American Federation of Labor." I think he called up on the phone to the Labor Temple asking for Johns, and I think he turned to me and said that they told him that he was on his way down to his office, that he had been down to the plant and he was on his way down to his office. So we sat there and waited a while, and pretty soon Ralph Johns came in and sat down and I explained to him that we had a controversy with St. [238] Johns Motor Express to the extent that I had told him that the Machinists Union was not affiliated with the American Federation of Labor and somebody had given them the information that they were so, and Eggeston asked Johns, "Are you affiliated with the American Federation of Labor?" and Johns said, "No, I am not. I was, but I am not." Well, he picked up a card he had, "It says on this card that you are affiliated with the American Federation of Labor and we assumed that you were." He said, "We made a mistake evidently." He said, "We assumed you were." He says, "I have an agreement with the American

(Testimony of Fred H. Manash.)

Federation of Labor Teamsters Union and it is probable—I may have to hire A. F. of L. men on that job out there.” He says “I will discuss it further with the managers of the Fry Company and with my attorney,” and Johns got het up and pointed at me and he says, “Well,” he says, “If you remove these machinists off the job and replace them with other men,” he says, “I will sue you under the Taft-Hartley law,” and he said, “Eggelston, I don’t intend to sue you; you are an innocent party to this.” He said, “I will sue the Council but I don’t intend to sue you at all; this is no reflection on you.” He said, “I don’t intend to sue you at all.” And he was really het up and I laughed at him, not believing that a local union, or a business agent of a local union—— [239]

* * *

Q. (By Mr. Landye): Now, Mr. Manash, what was the end of that conversation? Let me put it to **you this way: At that time did you tell Mr. Eggelston that you were going to tie up the St. Johns Motor Express?** A. I did not. In my——

Q. Just a minute. Did you at any time tell him that? A. I did not.

Q. Do you ever remember having any conversation of any kind [240] with a man by the name of Norling?

A. I don’t know the gentleman; I don’t even remember him at all, having any conversations with him.

Q. Now did you tell Mr. Eggelston at that time that you would remove the carpenters or remove

(Testimony of Fred H. Manash.)

any of the members of the building trades from the job—— A. I did not.

Q. ——unless he fired the machinists?

A. I did not.

Q. As a matter of fact, did you state that to anybody of the Fry Company or the St. Johns Motor Express? A. I did not.

* * *

Q. Now the letter which is marked General Counsel's Exhibit No. 10, dated August the 29th, was that dictated after your conversation with Mr. Eggeston or before, if you recall? [241]

A. That was dictated after my conversation with Mr. Eggeston.

Q. That is General Counsel's Exhibit 10.

A. That letter was there.

Q. Yes. And how did you—did you take that down to them or did you mail it to them?

A. Well, when I was so rudely interrupted by counsel over here, I was going to explain that, and if I may proceed, I will.

Trial Examiner Ward: Just give the answer.

Mr. Landye: Go ahead.

Trial Examiner Ward: Just explain the answer, what you did with that when you took it down.

Q. (By Mr. Landye): Let's first come back. Did you mail it to them or did you send it to them?

A. We mailed it to them.

Q. Yes. So that you didn't mail that to them until the afternoon of August 29th, which would be after the conversation?

(Testimony of Fred H. Manash.)

A. That is right after I had the meeting with Eggelston.

Q. Did you, however, indicate, in fairness to Mr. Eggelston, that probably such a letter would be in the mail to them?

A. I told them he would probably have a letter of that coming to them. I explained to him at the meeting in the conversation that I had with him that we had a request from the Millwrights and Machine Erectors Union to place them on the unfair list and that I would mail to him a letter requesting him to [242] appear before the board. [243]

* * *

Q. That is General Counsel's Exhibit 11. Now prior to the sending of the letter Mr. Scudder had already notified you that these machinist members would be taken off the job; you knew that before you wrote it, didn't you?

A. That is right. He assured me that he advised his client that the machinists would be taken off the job and millwrights would replace them, millwrights in the American Federation of Labor would replace them, and that the controversy was settled and that there was no need for his client to appear before the board.

Q. No action was taken by the Building Trades Council to put St. Johns Motor Express on the unfair list, was there?

A. No, there was no complaint before them at the time. [245]

* * *

(Testimony of Fred H. Manash.)

Q. (By Mr. Landye): Was there any conversation between yourself and Baker and Mr. Taylor concerning whether or not you would tie up the St. Johns or the whole Fry Roofing Company job?

A. No.

Q. Did you in the conversation that Mr. Eggelston was present, that was later, did you state—was there any statement made whether or not you would tie up the St. Johns Motor Express or the Fry Roofing Company and the whole job?

A. No. I will state what I did say, if you wish me to. [247]

* * *

Cross-Examination

By Mr. Boyd:

* * *

Q. Then why did you—why were you going to cite him to show cause against being put on the unfair list when you talked with him on Friday if you had a contract at that time?

A. I don't get your question.

Mr. Boyd: Will you read the question back?

(Last question read.)

Mr. Landye: I object to that as compound, complex, and a double-headed question.

Trial Examiner Ward: It is not entirely clear to the Examiner.

Mr. Boyd: I doubt if the witness can give a clear answer to it either. I am interested to know what his answer may be. [257]

The Witness: I will answer it.

Mr. Boyd: Let's see what your answer is.

(Testimony of Fred H. Manash.)

A. The reason why we cited St. Johns Motor Express before the Council to show cause why he shouldn't be placed on the unfair list was the complaint we received from the Millwrights and Machine Erectors Union that he was hiring men who were not members of their union, that job.

Q. (By Mr. Boyd): Yes, but if you had a contract, why didn't you cite him for contract violation? Can you give an answer to that?

A. I was citing him for that.

Q. Did you cite him for contract violation when you talked with him on August 29th?

A. Violation of the contract that we had on that project, yes.

Q. Is there any mention made of that in your letter of August 29th?

A. Not necessarily. We had to prove that he violated——

Q. As a matter of fact——

A. That was the complaint.

Trial Examiner Ward: One at a time. Let the answer be completed before we get another question.

Mr. Boyd: All right.

Q. As a matter of fact, Mr. Manash, this thing of your claiming to have a contract is wholly an after-thought, is it not? [258] A. No.

Q. Did you not, on October 23rd, disclose to the investigator of the National Labor Board that your organization had no contract covering the installa-

(Testimony of Fred H. Manash.)

tion of machinery in the Volney Felt Mills?

A. I did not.

Q. Did you not on that date say that the only contract that you had was the memorandum agreement dated August 21st, 1947, between the Campbell-Lowrie-Lautermilch Corporation and the Portland Building Trades Council?

A. And the company letter.

Q. The letter from Lautermilch, you mean?

A. That is right.

Q. Then that is what you refer to as being the contract and nothing more than that?

A. That is right.

Q. Is it customary in your practices to claim that contracts with one corporation have application to an entirely different operation, a different corporation?

A. Well, it is evident you don't understand the functionings of the Building Trades Council. The Building Trades Council have various—several crafts affiliated with the Council. Those sub-crafts have an agreement with a sub-contractor. We consider those agreements as part of our general agreement.

Q. And who here was a sub-contractor? [259]

A. St. Johns Motor Express.

Q. Sub-contractor of whom?

A. Sub-contractor of the Fry Roofing Company,

I assume.

Mr. Boyd: That is correct. That is all I want to know.

(Testimony of Fred H. Manash.)

A. Oh, that many.

Q. And those contractors were engaged in and around Portland and its vicinity; isn't that correct?

A. Yes, and sometimes over the state, various parts of the state.

Q. But certainly in and around the city of Portland you had these contracts that took care of union contracts that would take care of 95 per cent of the construction industry; isn't that right?

A. Yes, that would take care of practically 95 per cent of the construction industry in this locality, in my opinion.

Q. I mean those contracts covered 95 per cent of the construction industry?

A. That is right.

Q. And that was in effect in February and March of 1947?

A. Yes. [266]

* * *

R. W. JOHNS

a witness called in behalf of the Respondents Council and Millwrights, having been previously duly sworn, was examined and testified as follows: [269]

* * *

CHARLES L. BENTLEY

a witness called in behalf of Respondents Council and Millwrights, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Landye:

* * *

Q. But were they suspended by the Executive Board?

A. I understand that the Executive Council, without sanction of the convention——

Q. Suspended them?

A. That is right, disaffiliated.

Q. Now when about was that?

A. Oh, I would say that probably occurred around the middle of '46.

Mr. Landye: About the middle of '46. I think that is all. [273]

* * *

[Title of Board and Cause.]

INTERMEDIATE REPORT

Statement of the Case

Upon the charges and an amended charge duly filed by International Association of Machinists, herein called the IAM, on February 11, 1948, the General Counsel of the National Labor Relations Board¹ by the Regional Director for the Nineteenth Region, (Seattle, Washington), issued a complaint dated June 30, 1948,² against Lloyd A. Fry Roofing Company, a corporation; and Volney Felt Mills, Inc., a corporation herein called Respondents Fry and Volney, and against St. Johns Motor Express Company, a corporation, herein called St. Johns; and against Building and Construction Trades Council of Portland and vicinity, AFL, a labor organization herein called the Council; and the Millwrights and Machine Erectors Union, Local No. 1857, chartered by United Brotherhood of Carpenters and Joiners of America, AFL, a labor organization, herein called the Millwrights, alleging that Respondents Fry, Volney, and St. Johns had engaged in and were engaging in unfair labor

¹The General Counsel and his representatives at the hearing are referred to as the General Counsel and the National Labor Relations Board is referred to as the Board.

²On this same day, the said Regional Director pursuant to Section 203.33 of the Board's Rules and Regulations, issued an order consolidating the above-numbered case for hearing.

practices affecting commerce, within the meaning of Section 8(a)(1)(3) and Section 2(6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act; and that the Respondents Council and Millwrights had engaged in, and were engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act. Copies of the complaint, with charge attached and notice of hearing thereon were duly served upon the Respondents Fry, Volney, Respondent St. Johns, and Respondents Council, and Millwrights.

With respect to the unfair labor practices, the complaint alleged in substance that: (1) On or about August 22, 1947, Respondent St. Johns entered into a contract with Respondents Fry and Volney wherein St. Johns undertook to install certain machinery and equipment for Respondents Fry and Volney, wherein Respondents Fry and Volney reserved complete supervision, control, and responsibility in relation to accomplishing the work to be performed by Respondent St. Johns under said contract; (2) that on or about August 26, 1947, the Respondents Fry, Volney, and St. Johns, employed Ray E. Baker, Fred Bolton, William Bozarth, D. F. Donnelly,³ John L. Kesch, and J. R. O'Neel and assigned them to the work to be done in performance of the contract; (3) on or about August 29, 1947, Respondents Council and Millwrights, requested Respondents Fry, Volney, and

³At times referred to in the record as Daniel F. Donnelly.

St. Johns to discharge the employees named next above and replace them with employees who were members of Respondent Millwrights, and threatened the use of economic sanctions against said Fry, Volney, and St. Johns, if they did not discharge said employees; (4) on or about September 2, 1947, Respondents Fry, Volney, and St. Johns, discharged said employees above named, pursuant to the request and under compulsion of the threat made by Respondents Council and Millwrights; (5) since said date of September 2, 1947, Respondents Fry, Volney, and St. Johns, have failed and refused and continued to refuse to reinstate said employees to their former or substantially equivalent positions; (6) Respondents Council and Millwrights requested the discharge of said employees, and threatened to use economic sanctions against Respondents Fry, Volney, and St. Johns as aforesaid thereby attempted to cause and did cause discharge of said employees for the reason that said employees were members of the IAM and were not members of the Millwrights; (7) Respondents Fry, Volney, and St. Johns, did discharge and thereafter failed to or refused to reinstate said employees for the reason that the said employees were members of the IAM and were not members of the Millwrights; and (8) the acts described above Respondents Fry, Volney, and St. Johns and Respondents Council and Millwrights, and each of said Respondents restrained, and coerced the employees of Respondents Fry, Volney, and St. Johns in the

exercise of the rights guaranteed in Section 7 of the Act as amended.

On or about October 28, 1948, Respondents Council and Millwrights filed its answer denying the commission of any unfair labor practice and alleged affirmatively, in part, that Respondents Council and Millwrights had a closed-shop contract with Respondents Volney and Fry wherein and whereby the latter contracted to employ only employees who were members of unions affiliated with the Council and with the American Federation of Labor.

On or about October 29, 1948, Respondents Fry and Volney filed an answer in which they admitted certain portions of the complaint; admitted that each Respondent was engaged in interstate commerce but denied that any of the work done at the time and place specified in the complaint affected commerce. The answer admitted the discharge of the six employees named above but alleged that such discharge was made pursuant to an alleged closed-shop contract with the Council, which said closed-shop contract was in existence prior to the effective date of the Labor Management Relations Act of 1947; it further alleged that in the event they were not protected by said closed-shop contract and justified in doing the acts complained of the discharges were nevertheless made necessary and were forced upon them by Respondents Council and Millwrights under threat of economic sanctions and removal of all American Federation of Labor workmen from the construction project of said Respondents Fry and Volney.

On or about October 11, 1948, Respondent St. Johns filed an amended answer wherein it admitted some of the allegations of the complaint but denied the commission of any unfair labor practice; and alleged affirmatively and in substance that it had not discriminated in regard to the hire and tenure of the above-named employees, since its acts were done under specific instructions of Respondents Fry and Volney, and thus such acts were done as an agent of the principals Respondents Fry and Volney.

Pursuant to notice, a hearing was held at Portland, Oregon, on November 9 and 10, 1948, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, all Respondents, and the IAM were represented by counsel. All participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues and at the close of the hearing, the parties were afforded an opportunity to argue orally before the undersigned. Such arguments were included in the transcript of proceedings. The parties were advised they might file briefs and/or proposed findings of fact and conclusions of law with the undersigned. Briefs were filed by General Counsel, the counsel for Respondent Fry and Volney, by counsel for St. Johns, the counsel for the Council and Millwrights, and by counsel for the IAM. During the course of the hearing counsel for the Council and Millwrights,

in substance and effect, moved for a dismissal of the complaint on grounds as follows: (1) that Section 8(b)(1)(A) and (2) of the Act as amended, were unconstitutional in that they were in violation of the V, and XIII, Amendments to the Constitution of the United States;⁴ (2) that inasmuch as the Council and Millwrights had a closed-shop contract with Respondents Fry and Volney which antedated the enactment of the Act, as amended, requiring the employment of members of the Council and Millwrights only, Fry, Volney, and St. Johns were required to dismiss IAM members then employed, on demand; and (3) that in the event it be held that members of the Council and Millwrights were not entitled to replace members of the IAM on the job herein involved, the complaint should nonetheless be dismissed since the IAM had likewise engaged in unfair labor practices in assuming to represent employees of Fry and Volney without having been selected by a majority of the employees in an appropriate unit. The undersigned denied said motions with a provision that they could be renewed at or before the close of the hearing. Such motions were renewed at the close of the taking of testimony herein. The undersigned reserved rulings thereon and now rules that said

⁴Counsel for said Council and Millwrights was particularly concerned with having the record in the instant case show that his clients questioned the constitutionality of Section 8(b)(1)(A) and (2) of the Act, as amended, at the earliest opportunity.

motions, and each of them, be, and they are hereby, denied.⁵

Also during the hearing Respondents Fry, Volney, Council, and Millwrights moved for a dismissal of the complaint for the alleged reason that the Board lacked jurisdiction herein. The undersigned denied the motions, but permitted their renewal at the close of the hearing, at which time the undersigned reserved ruling, and now rules that said motions to dismiss be, and they are hereby, denied.

During the hearing the undersigned reserved ruling on a motion by counsel for the Council and Millwrights to strike General Counsel's Exhibits Nos. 4 and 5, and now rules that said motion be denied.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The business of the Respondents

Lloyd A. Fry Roofing Company is a corporation organized and existing under the laws of the State of Delaware, and licensed to engage in business in the State of Oregon and in 10 other States of the United States. Its principal offices are located in Chicago, Illinois, and its place of business in Oregon is at 3750 N.W. Yeon Avenue, where it is

⁵Matter of Rite-Form Corset Company, Inc., and United Steel Workers of America, CIO, 75 N.L.R.B. 174.

engaged in the manufacture, distribution, and sale of felt roofing. Its total annual business at its several plants throughout the United States is in excess of \$1,000,000. Included in this figure is the dollar volume of its business at its plant at Portland, Oregon, where annually it purchases materials and supplies valued in excess of \$100,000, of which more than 30 per cent is transported to this place of business in interstate commerce from States other than the State of Oregon. It annually sells and distributes products produced at its Portland plant, products valued in excess of \$200,000, of which more than 40 per cent is transported from its place of business in Oregon in interstate commerce to destinations in other States.

Volney Felt Mills, Inc., is likewise a corporation duly organized and existing under the laws of the State of Delaware. It is licensed to engage in business in the State of Oregon, and in three other States of the United States. Its principal offices are in Chicago, Illinois, and its place of business in Oregon is at its plant at 3750 N.W. Yeon Avenue, where it is engaged in the manufacture, distribution, and sale of roofing felt. Its total annual business at its several plants throughout the United States is in excess of \$1,000,000. Included in this figure is the dollar volume of its business at the plant at Portland, Oregon, where annually it purchases materials and supplies valued in excess of \$100,000, of which more than 20 per cent is transported to this place of business from States other than the State of Oregon, and annually it sells

and distributes its products produced at this plant valued in excess of \$200,000, of which more than 20 per cent is transported from its place of business in Oregon in interstate commerce to destinations in other States.

St. Johns Motor Express Company is a corporation duly organized and existing under the laws of the State of Oregon, with its principal office and place of business located at Portland, Oregon, where it has been and is now engaged in the transportation of freight by motor vehicle and in the installation of industrial machinery. In the course and conduct of its business at Portland, Oregon, it annually renders services in installing industrial machinery and as a motor carrier valued in excess of \$1,000,000, of which more than 60 per cent are services performed in interstate commerce to and from States other than the State of Oregon.⁶

While Respondents Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., signed a stipulation admitting that they were engaged in interstate commerce such stipulation was qualified as follows:

Respondents, Lloyd A. Fry Roofing Company Volney Felt Mills, Inc., deny that any of the work being done at the time and place specified in the complaint effected commerce.

⁶The foregoing findings as to Respondents Fry and Volney are based upon a signed stipulation of the parties, and the findings with respect to Respondent St. Johns based upon the allegations contained in the complaint and admitted by the separate answer of Respondent St. Johns.

The parties further stipulated that Volney Felt Mills, Inc., operates as a subsidiary of Lloyd A. Fry Roofing Company, each corporation having directors and officers in common.⁷

All Respondents (except St. Johns) contend, in substance, (a) that inasmuch as the operations of such Respondents consist of building construction and installation of equipment, the Board should not exercise or assert jurisdiction; and (b) that since the Felt Mill Building and the machinery installed therein had not been used or engaged in the manufacture of any commodity which entered commerce during the periods referred to in the complaint, the Board is without jurisdiction to entertain charges or make findings of unfair labor practices in the instant matter.

As to contention (a): The Board has repeatedly held that it has jurisdiction over construction projects if their interruption would affect interstate commerce, "and that our abstention from exercising our jurisdiction in construction cases was a matter of administrative choice and not of legal necessity."⁸ Contention (a) is without merit.

⁷Respondent St. Johns was not a party to the execution of the stipulation concerning the nature of the business of Respondents Fry and Volney.

⁸See *Brown and Root, et al., d/b/a Ozark Dam Constructors*, 77 N.L.R.B. 1136; (and cases therein cited); and see also *United Brotherhood of Carpenters and Joiners of America, AFL, (Ira A. Watson Company, d/b/a Watson's Specialty Store)*, 23 L.R.R.M. 1102.

As to contention (b): The record discloses that both Respondents Fry and Volney are admittedly engaged in interstate commerce in a number of States other than that of Oregon: that the Volney Felt Mill was constructed for the purpose of producing felt to be used in part, by the Fry Roofing Company and that since its construction, the felt so produced by the Volney Felt Mills, or a substantial portion thereof, has been used by the Fry Roofing Company in the manufacture of roofing and has been sold, in part at least, in interstate commerce. The construction of the Volney Felt Mill was and is in effect merely the enlargement of the Fry Roofing Company Plant. It would appear that where a firm or corporation is engaged in interstate commerce, and enlarges its plant and increases its production, such operations are in effect in interstate commerce. It is so found. Contention (b) is without merit. The undersigned finds that Respondents Fry, Volney, and St. Johns are engaged in commerce within the meaning of the Act and the Act as amended.

II. The labor organizations involved

International Association of Machinists; Willamette Lodge #63 affiliated with the International Association of Machinists; Building and Construction Trades Council of Portland and Vicinity, affiliated with the American Federation of Labor; Millwrights and Machine Erectors Union, Local No. 1857, chartered by the United Brotherhood of Carpenters and Joiners of America, A. F. of L., are each labor organizations within the meaning of Section 2 (5) of the Act.

III. The unfair labor practices

A. The discriminatory discharges

1. The sequence of events

Sometime prior to January 1, 1947, Respondent Fry determined to construct a felt mill adjacent to and in connection with its Roofing Plant located in Portland. Sometime between January 1 and March 1, 1947, Respondent Fry entered into a building construction contract with Campbell, Lowrie, Lautermilch Corp. of Chicago, Ill., herein called the Building Contractor. Eric Norling, an employee of the Building Contractor was put in charge of the building construction as general superintendent on behalf of the Building Contractor.

Between January 1 and on or about March 1, 1947,⁹ Fry caused felt mill machinery valued at between \$150,000 and \$175,000, to be shipped, in different installments, from Wisconsin to Portland where it was stored in the Fry Roofing Plant pending its installation in the new felt mill when such mill was ready therefore.

On or about March 15, John R. Baker, as chief engineer¹⁰ for both Fry Roofing Company and Volney Felt Mills, went to Portland, under certain instructions. He testified:

I was instructed to make arrangements with some

⁹Unless otherwise indicated all events referred to herein occurred in 1947.

¹⁰Baker testified that he had been chief engineer for Fry and Volney for upwards of 14 years.

contracting concern to supply labor and tools and perform the work of setting up machinery in a new paper mill, a new felt mill.

By on or about August 15, the felt mill building had progressed to a point that would permit the installation of mill machinery then in storage at the Fry Roofing Plant. Baker returned to Portland at this time and as the result of certain negotiations entered into a contract with the Respondent St. Johns for the installation of the felt mill machinery. Such contact is evidenced on the part of St. Johns, by a letter, as follows:

August 22, 1947.

Lloyd A. Fry Roofing Company,
3750 N.W. Yeon Avenue,
Portland, Oregon.

Attention: Mr. Baker.

Dear Sir:

Confirming our conversation of yesterday and this morning in connection with the installation of the equipment of your new felt mill with complete supervision, control and responsibility.

We will advance and pay all labor costs including labor taxes to the workers involved and the various governmental institutions. We will also pay material costs in nominal sums as required.

At the end of each week we shall render a strict accounting to you of all of the above expenditures for the purpose of reimbursement. For this service our charge shall be figures 10 percent of such moneys expended.

In addition to the above, it is our understanding you will require equipment which we regularly employ in connection with transporting properties, rigging, etc. The following are charges for equipment fully operated

- A. Frames and Winch Trucks \$6.50 per hour
- Solo Trucks \$4.75 per hour
- Extra men \$2.50 per hour

It is also contemplated that you will need a few jacks, cribbing and the like which we shall be glad to supply at \$2.00 per day.

Upon investigating wage scale with the Unions involved, we find machinists rates are \$1.95 per hour, machinists helpers \$1.60 per hour and for carpenters, \$1.75 per hour. This rate is on the basis of an 8 hour day, 5 days per week.

Very truly yours,

ST. JOHNS MOTOR
EXPRESS CO.

/s/ V. G. EGGLESTON,
Office Manager.¹¹

VJE-K

The foregoing letter was acknowledged by means of a "shipping notice," directing that St. Johns "Ship to" Volney Felt Mills, Inc. c/o Lloyd A. Fry

¹¹The facts found in this Section to this point are based on credited and undisputed testimony and documents.

Roofing Company, 3750 N.W. Yeon Ave., Portland, Oregon.

“To move and place Felt mill machinery as set forth in your letter of August 22, 1945.”

/s/ LLOYD A. FRY ROOFING CO.

By /s/ E. J. NELSON.

2. The employment of machinists

James A. Taylor, foreman employed by St. Johns, was assigned as the St. Johns' representative to supervise the installation of the machinery in question, but was instructed to take all of his instructions from the Fry, Volney Chief Engineer Baker. With respect to employees required for installation of the mill machinery, Taylor asked Baker, “—what craft will we have to use?” Baker replied,

It will have to be Machinists 63, A. F. of L.—you contact the men and have them out here.

In this connection Taylor testified,

So I did. I called the Labor Temple, which I thought was the right place, and I asked for Local 63, Machinists Local and ordered the men out.

As a result of Taylor's call to Local 63, Machinists Union, Daniel F. Donnelly, and John O'Neel machinists, Ray Baker and William Bozarth machinists helpers reported to the Volney Felt Mill and to Taylor on August 27. All four men were put to work on the installation job.

On August 28, Taylor asked Donnelly if the

latter knew where Taylor could get another good machinist. Donnelly stated that he did know of such a man and would get word to him. Donnelly thereafter contacted F. T. Bolton,¹² machinist and sent him to the Local #63 office for clearance and told him to report to Taylor. Bolton reported on Friday, August 29, but without tools, and was told to and did report thereafter on September 2. Also on September 2, John Kesch a machinists helper reported, was hired and put to work.¹³

3. The discharges

After the first four machinists had been hired, and on Thursday, August 28, one Sandstrom, the business agent for the Millwrights went to the felt mill and talked to Foreman Taylor. After Sandstrom left Taylor reported to the machinists that Sandstrom was the business agent for the Millwrights and had come to the plant for the purposes of having the machinists put off the job and millwrights hired in their stead.

On the following day, Friday, August 29, Sandstrom again appeared at the felt mill accompanied by Fred H. Manash, secretary and business representative of the Council, and talked with Taylor,

¹²At times in the record referred to as Fred Bolton.

¹³Kesch reported to the job as the result of Taylor having requested Bolton "to bring another man with" him. Both Bolton and Kesch presented clearance cards from Machinists Local #63, when they reported for work on September 2.

after which Donnelly telephoned R. W. Johns, business agent for Machinists Local #63 and reported the fact that Sandstrom had been at the felt mill, and requested that Johns come to the mill. Johns did go to the mill and talked with Taylor at which time Taylor told Johns that Manash and Sandstrom had been at the mill and had requested removal of the machinists. Taylor stated that he had informed the two that he would not have the final say on such removals and that such word would come from the Respondent St. Johns' office. Taylor then excused himself; was absent for a short time; returned and informed Johns that from a phone call he learned that Manash was in Eggleston's office.

Business Agent Johns, then went to Eggleston's office and found Eggleston and Manash together. Johns had met Manash prior to this time. Johns introduced himself to Eggleston, after which the three entered into a considerable discussion. During the discussion next above referred to Manash informed Eggleston that he was "citing" him to appear before the Executive Council of the Building Trades to show cause why St. Johns Motor Express Company should not be placed upon the "Unfair List." During this conference of Eggleston, Manash, and Johns, Manash delivered a letter to Eggleston

on the letter head of the Council dated August 29, 1947, reading as follows:

St. Johns Motor Express Company,
7220 N. Burlington,
Portland, Oregon.

Gentlemen:

We have a request from Millwrights Local Union No. 1857 to place your firm on the official "Unfair List."

As we are always desirous of hearing both sides of any controversy, we respectfully request that you appear before the Board of Business Representatives at a meeting to be held on Tuesday, September 2, 1947, at 10:15 a.m., Hall J, Labor Temple, Portland, Oregon, to state your version of this controversy, at which time action will be taken on this request to place your firm upon the Unfair List.

Trusting that you will be present at this meeting, we are,

Very truly yours,

BUILDING AND CONSTRUCTION TRADE
COUNCIL OF PORTLAND AND VI-
CINITY

/s/ FRED MANASH,
Secretary.¹⁴

¹⁴While Manash denied that he had delivered the above letter in person he testified that he told Eggleston that he was going to mail such a letter, but gave him all the information that was contained in such

In connection with this particular meeting Eggleston testified:

Q. Do you remember whether at that time he indicated what he would do in the event you did not replace machinists with millwrights?

(Mr. Landye): I don't care what he indicated; I want to know what he said.

(Mr. Boyd): Yes what he said.

A. I can't tell you his exact words at what he said, but the tenor of his conversation was the same at all times; that he wanted the contract with them, he intended it to be kept, and if it wasn't going to be kept he was going to do something about it, namely, pull those men off that job.

Q. That is what would have happened at the job, but he did say to you what he was going to do in relation to St. Johns Motor Express?

A. I asked him, as I recall, specifically what it meant to St. Johns in order that I could get all the information, and Mr. Manash said to me that it might—he didn't say that it would, as I recall—he says that it might reach the point where our teamsters could not deliver to jobs on which A. F. of L. carpenters were employed.¹⁵

letter. On the record and from his observation of the witnesses the undersigned credits Eggleston's recollection to the effect that the letter was delivered.

¹⁵Manash testified that when he learned that the St. Johns Motor Express Company had the contract installing machinery and were hiring machinists

Eggleston informed Manash, in substance, that he could make no response to Manash's demands that the machinist employees be displaced with Millwrights, and that he would take the matter up with the Fry Roofing Company. Eggleston then contacted B. B. Alexander, Portland Manager for Fry Roofing Company and for Volney Felt Mills and informed Alexander, in the presence of Chief Engineer Baker, that Manash claimed that he had a contract requiring all employees to be members of American Federation of Labor Unions and members of the Council; and that Manash had threatened to pull all men from the building project. Alexander and Baker told Eggleston that the Fry Roofing Company and Volney could not stand a stoppage of work on the building as they needed a roof over the building to the end that the machinery could be installed and the mill made ready for operation by a date certain.

Eggleston as manager for St. Johns, next sought legal advice from the law firm of Scudder and Long. He testified:

I determined from Mr. Scudder that we were agents of Fry Roofing Company and Volney Felt Mills, and that if Volney Felt Mills or Fry Roofing Company told us to fire the ma-

instead of millwrights he "ascertained who was the company who had the contract for the installation of the machinery, St. Johns Motor Express. Checking up the Company I found the Company had an agreement with an affiliate of the Building Trades Council, with the Teamsters Union, and recorded as a union firm with the Building Trades Council——"

chinists and hire millwrights that is exactly what we should do, and that was done.

On the afternoon of September 2, Engineer Baker informed Foreman Taylor:

We will have to change crafts, as bad as I hate to do it—we will have to—it is a case of either changing crafts or stopping all our building.

Taylor then proceeded to discharge all the IAM machinists and helpers who had been hired except Ray Baker, machinists helper who left before notified of his dismissal. Baker's dismissal was completed on the following morning, September 3rd.

4. Issues; contentions; conclusions

(a) Respondents Council and Millwrights contend, in substance and effect, that they had a valid closed-shop contract with Respondents Fry and Volney which required that the Respondents Fry and Volney employ men who were members of unions belonging to the Building and Construction Trades Council of Portland and Vicinity and who were affiliated with the American Federation of Labor.

(b) Respondents Fry and Volney contend, in substance and effect, that the Council and Millwrights had a valid closed-shop contract which required the discharge of the International Association of Machinists members who had been hired by St. Johns from the job upon demand by the Council and Millwrights; and further contend that assuming

jurisdiction of the Board and that unfair labor practices were committed, Respondents Fry and Volney were "justified in doing the acts complained of and that they were made necessary and forced upon them by Respondents Building and Construction Trades Council and Millwrights by reason of their having engaged in improper and unlawful acts."

(c) Respondent St. Johns contends, in substance and effect, that inasmuch as the record clearly discloses that all acts performed by St. Johns or its foreman in connection with such discharges were at the specific direction of Engineer Baker, such discharges were actually made by the principals and not by their agent, St. Johns, and that if said acts are considered as violating the National Labor Relations Act, St. Johns should not be included in any cease and desist orders issued herein.

As to (a), the Council and Millwrights' contention, the record contains no evidence of any contract having been executed between Respondents Fry and Volney and Respondents Council and Millwrights. The record does contain an executed contract made by and between the firm of Campbell, Lowrie, Lautermilch Corp., of Chicago, Illinois, and Building and Construction Trades Council of Portland and Vicinity under date of February 21, 1947.¹⁶ The contract referred to makes no reference to Respondents Fry or Volney, or to the specific building that was to be built as the Volney Felt Mill, it merely

¹⁶See "Appendix A."

provides that the Building Contractor, referred to in the contract as "The Employer" shall employ only workmen in good standing in unions affiliated with the Council; that such workmen shall be employed through the offices of the Unions having jurisdiction over the work; and that the Council would not "work open shop."

In addition to the contract above referred to, the Council, for the purpose of showing that the above referred to contract was executed by the Building Contractor as agent for Respondent Fry, introduced a letter on the letterhead of the Building Contractor, dated March 7, 1947, reading as follows:

Portland Building Trades Council,
Portland, Oregon.

Attention: Mr. Fred Manash, Secretary.

Gentlemen:

Re: Lloyd A. Fry Roofing Company.
Felt Plant, Portland, Oregon.

During the early part of January when the writer was in Portland, we discussed construction of the above building. At that time I agreed that all work on the new building, be it construction, pipe-work, or setting of machinery, would be done by union men under the jurisdiction of the Building Trades Council. This letter will confirm that agreement, and you must rest assured that we will keep the job on a union basis throughout.

It is not entirely clear in my mind what trades

handle the various parts of the machinery setting, but I am sure that there are mechanics familiar with this machinery setting who are members of the Building Trades Council.

At the moment I cannot state definitely that all the machinery setting will come under our contract, but I have been assured by the Owner that the work will be done on a fair basis to you whether it is done under our supervision or not.

Very truly yours,

CAMPBELL, LAWRIE,
LAUTERMILCH CORP.,

/s/ R. R. LAUTERMILCH.

The record does not contain a copy of the contract between the Building Contractor and Respondents Fry and Volney. It is clear from the record, however, that the Building Contractor exercised no supervision over the installation work and setting of machinery which was performed by Respondents St. Johns under its cost plus contract dated August 22, 1947.

In support of the contention that the contract of February 21, 1947, and the letter of March 7, 1947, each referred to above, constituted a valid closed-shop contract binding upon Fry and Volney, Respondents Fry, Volney, Council and Millwrights introduced evidence to the effect that Engineer Baker, on behalf of Fry and Volney, instructed St. Johns to hire only "Machinists" who were members of

Local #63, affiliated with the "American Federation of Labor."

The record further shows that Taylor, as foreman for St. Johns did hire "Machinists" who were members of Local #63, but inasmuch as the International Association of Machinists, although formerly so affiliated, was not at that time affiliated with the American Federation of Labor, Taylor did not employ American Federation of Labor machinists. Respondents Fry, Volney, Council, and Millwrights therefore contend that the employment of the "Machinists" under the conditions above set out was a violation of the alleged closed-shop contract.

The facts above found raises two questions for determination, (1) assuming the validity of the February 21 contract between the Council and the Building Contractor as between themselves, did such contract authorize the Building Contractor to act as an agent for Respondents Fry and Volney, and make agreements with third parties concerning matters outside the scope of the contract between the Building Contractors and Respondents Fry and Volney binding on the latter; and (2) assuming that the Building Contractor's were the agents of Fry and Volney and acted as such in the execution of the February 21 contract and in the writing and dispatching of the letter of March 7, does the contract of April 21; the letter of March 7; and Baker's instructions to St. Johns to hire machinists affiliated with the American Federation of Labor constitute a closed-shop contract valid under Section 8 (3) of

the Act prior to amendment and Section 8 (a) (3) of the Act as amended?

As to question (1) an examination of the contract of February 21, 1947, fairly discloses that it was one between Campbell, Lowrie, Lautermilch, Corp., as a principal and the Building and Construction Trades Council of Portland and vicinity, which by its terms was not and cannot be binding upon Respondents Fry and Volney. While it may well be that the Building Contractor in his contract with Fry and Volney for the construction of the felt mill building incorporated the conditions or some of the conditions of the February 21 contract in such building contract the record herein does not contain a copy of such building contract and since Fry and Volney were not parties to the contract of February 21, they may not be bound thereby.

With reference to the letter of March 7, 1947, in which the Building Contractor stated to the Building Trades Council that the Lloyd A. Fry Roofing Company felt plant would be constructed by union men under the jurisdiction of the Building Trades Council. It also stated:

At the moment I cannot state definitely that all the machinery setting will come under our contract, but I have been assured by the Owner that the work will be done on a fair basis to you whether it is done under our supervision or not.

The record herein conclusively discloses that that portion of the machinery installation contracted and performed by St. Johns was not done under the

supervision of Campbell, Lowrie, Lautermilch, Corp.

From the foregoing it is clear that neither the Building and Construction Trades Council of Portland and Vicinity or the Millwrights had any contract, valid or otherwise, directly or indirectly with either Respondents Fry or Volney, and it is so found. Question (1) must be answered in the negative.

As to question (2), assuming, arguendo, that Fry and Volney are parties to the contract dated February 21, 1947, and authorized the Building Contractor to write the letter of March 7, 1947, would such contract and such letter constitute a valid closed-shop contract under Section 8 (3) of the Act and under Section 8 (a) (3) of the Act as amended? Respondents Fry and Volney contend inter alia they were compelled to discharge the six machinists named herein before pursuant to the February 21, 1947, contract as modified by the March 7, 1947 letter. The proviso of Section 8 (3) of the Act prior to amendment, insofar as is material herein reads as follows:

Provided, that nothing in this Act . . . shall preclude an Employer from making an agreement with a labor organization (not established, maintained, or assisted, by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a) in the appropriate collective

bargaining unit covered by such agreement
when made.¹⁷

It is clear from the record herein that on April 21, 1947, Respondents Fry and Volney had no employees in an appropriate collective bargaining unit covered by a contract February 21, 1947, on the date such contract was made. The Board and the Courts have long and consistently held that a closed-shop contract is invalid where the Union securing the same did not represent an uncoerced majority of the employees at the time the contract was executed.¹⁸ Since the contract relied upon by Respondents' Council, Millwrights Fry and Volney is void and of no effect, as a closed-shop contract, binding upon Fry and Volney, it cannot operate a defense of the discharge of the six machinists named hereinbefore. Question (2) must be answered in the negative.

As to (b), Respondents Fry and Volney's contentions, coincide with the contentions of Respondents Council and Millwrights considered above to effect that the Council and Millwright had a valid closed-shop contract which required discharge of machin-

¹⁷The Proviso under Section 8 (a) (3) of the Amended Act is to the same effect insofar as it requires a labor organization to be the representative of the employees as provided in Section 9 (a) in the appropriate collective bargaining unit covering such agreement when made. (Underscoring supplied.)

¹⁸See *International Association of Machinists, etc. v. N.L.R.B.* 311 U.S. 72. See also *Lennox Shoe Company, Inc.*, 4 N.L.R.B. 272.

ists on demand, are, for the reasons stated in connection with the contention of the Council and Millwrights, found to be without merit. Respondents Fry and Volney's further contention to the effect that they were justified in doing the acts complained of by reason of the Council and Millwrights having engaged in improper and unlawful acts, which should excuse Fry and Volney. The Board and the Courts have long and consistently held that economic exigency does not excuse violations of the Act. In the *Star Publishing Case*.¹⁹ The Court of Appeals for the Ninth Circuit stated:

The Act prohibits unfair labor practices in all cases. It permits no immunity because an employer may think that the exigencies of the moment may require infractions of the Statute. In fact, nothing in the Statute permits or justifies its violation by employer.

From the foregoing in the record it is clear that the contentions of Respondents Fry and Volney are without merit.

As to (c), Respondent St. Johns' contentions, wherein it is contended discharges at issue herein were at the specific direction of Engineer Baker, and were thus actually made by St. Johns' principals, namely, Fry and Volney, and not by their agent St. Johns, thus contending in substance St. Johns was not an employer.

¹⁹97 F. 2d 465, 475 (C.A. 9). See also *McQuay-Norris Manufacturing Company v. N.L.R.B.*, 116 F. 2d 748, 752.

The word "persons" as used in Section 10 (c) which provides that if the Board is of the opinion that any persons named in the complaint has engaged in or is engaging in any unfair labor practice it may issue an order and take affirmative action in regard to such persons, includes the word "employer" as used in Section 2 (2), which provides that "employer" includes any person acting in the interest of an employer directly or indirectly. *N.L.R.B. v. Hearst*, 2 *N.L.R.B.* 530, enforced 102 *F. 2d* 658, 663.

Respondent St. Johns is an employer as defined by the Act and is thus subject to the cease and desist order hereinafter recommended.

It is so found:

Conclusions

Upon the basis of the foregoing, and upon the entire record in the case, the undersigned finds that, by the statements and conduct of Manash as Secretary of Respondents Council and Millwrights by threatening Respondent St. Johns that unless the six machinists employed by it were discharged and replaced by Millwrights the Respondent Council, would as to St. Johns, see to it that Teamsters employed by St. Johns could not deliver material to jobs on which American Federation of Carpenters were employed; by the conduct of the Council on August 29, 1947, citing St. Johns to appear before the Board of Business Representatives of the Council on September 2, 1947, to show cause why the

firm of St. Johns should not be placed upon "The Unfair List"; by Manash's statement to St. Johns' Business Manager, Eggleston, and to Eric Norling, superintendent on behalf of the Building Contractors, that unless the IAM machinists then employed were discharged and replaced by Millwrights all carpenters employed in the building of the felt mill would be pulled off the job, the Respondents Building and Construction Trades Council of Portland and Vicinity and Millwrights and Machine Erectors Union, Local No. 1857, attempted to cause and caused Respondents Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., to discriminate in regard to the hire or tenure of employment against employees Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel in violation of Section 8 (a) (3) of the Amended Act, and said Respondents Building and Construction Trades Council of Portland and Vicinity and Millwrights and Machine Erectors Union, Local No. 1857, and each of them have restrained and coerced the employees of Respondents Lloyd A. Fry Roofing Company and Volney Felt Mills in the exercise of the rights guaranteed in Section 7 of the Act thereby violating Section 8 (b) (1) (A) and (2) of the Act.

It is further found that by the discharge of Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel, September 2, 1947, the Respondent Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., and St. Johns Motor Express Company, and each of them, have inter-

ferred with, restrained, and coerced the employees of the Respondents Fry and Volney in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (a) (3) of the Amended Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents Fry, Volney, and St. Johns, and the Respondents Council and Millwrights set forth in Section III above, occurring in connection with the business operations of Respondents Fry, Volney, and St. Johns, set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Respondents Fry, Volney, and St. Johns, and the Respondents Council and Millwrights have engaged in unfair labor practices, the undersigned will recommend that they, each of them, cease and desist therefrom and take affirmative action set forth below which the undersigned finds will effectuate the policies of the Act.

Since it has been found that the Respondents Council and Millwrights attempted to cause and caused the Respondents Fry, Volney, and St. Johns to discriminatorily discharge Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel on September 2, 1947, for

the reason that said employees were members of Lodge #63, IAM and were not members of the Millwrights, the undersigned will recommend that the Respondents Fry, Volney, and St. Johns make said above-named employees, and each of them, whole for any loss of pay he may have suffered by reason of such discrimination by payments to him of a sum of money equal to the amount he normally would have earned as wages from the date of such discriminatory discharge to the date which the employment of each of said employees would, absent discrimination, been terminated.

Since it has been found that by such discrimination the Respondents Fry, Volney, and St. Johns have violated Section 8 (a) (3) of the Act and the Respondents Council and Millwrights have violated Section 8 (b) (1) (A) and (2) of the Act, the undersigned will recommend that the Respondents Fry, Volney, and St. Johns and the Respondents Council and Millwrights, jointly and severally make the said above-named employees whole in the manner above described, less their net earnings²⁰ during the period of such discrimination.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. International Association of Machinists, and

²⁰See Matter of Crossett Lumber Company, 8 N.L.R.B. 440; Republic Steel Company v. N.L.R.B., 311 U.S. 7.

Willamette Lodge #63, affiliated with the International Association of Machinists; Building and Construction Trade Council of Portland and Vicinity, affiliated with the American Federation of Labor; and Millwrights and Machine Erectors Union, Local No. 1857, chartered by the United Brotherhood of Carpenters and Joiners of America, AFL, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization of Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel, thereby encouraging membership in Millwrights and Machine Erectors Union, Local No. 1857, chartered by the United Brotherhood of Carpenters and Joiners of America, AFL, Respondents Fry, Volney, and St. Johns, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By said conduct the Respondents Fry, Volney, and St. Johns, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. By causing Respondents Fry, Volney, and St. Johns to discriminate against Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel in violation of Section 8

(a) (3) of the Act, thereby restraining and coercing the employees of Respondents Fry, Volney, and St. Johns in the exercise of the rights guaranteed in Section 7 of the Act, the Respondents Council and Millwrights have violated Section 8 (b) (1) (A) and (2) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends.

1. Lloyd A. Fry Roofing Company, a corporation, Volney Felt Mills, Inc., a corporation and St. Johns Motor Express Company, a corporation of Portland, Oregon, their agents, successors and assigns shall:

(a) Cease and desist from encouraging membership in Millwrights and Machine Erectors Union, Local 1857, chartered by United Brotherhood of Carpenters and Joiners of America, AFL, or in any other labor organization of their employees, by discriminating in regard to their hire and tenure of employment, or as to the terms and conditions of their employment.

(b) In any like or related manner, cease and desist from interfering with, restraining, coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act:

2. Take the following affirmative action which the undersigned will affectuate the policies of the Act:

(a) Make whole Roy Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John Kesch, and J. R. O'Neel in the manner set forth in "The remedy," above;

(b) Post in conspicuous places at Respondent Fry's Roofing Plant, at Respondent Volney's Felt Mill, and at the place of business of Respondent St. Johns in Portland, Oregon, copies of notice attached hereto and marked Appendix B. Copies of such notice furnished by the Regional Director for the Nineteenth Region, after being duly signed each of the foregoing named Respondents' representative are to be posted by said Respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by said Respondents to be sure that said notices are not altered, defaced, or covered with any other material;

(c) Notify the Regional Director for the Nineteenth Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps each of the foregoing referred to respondents has taken to comply therewith.

3. Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwrights and Machine Erectors Union, Local No. 1857, chartered

by United Brotherhood of Carpenters and Joiners of America, AFL, their officers, representatives and agents shall:

(a) Cease and desist from causing or attempting to cause Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., and St. Johns Motor Express Company, or any other employer to discriminate against its employees in violation of Section 8 (a) (3) of the Act, thereby restraining and coercing said employees in the exercise of the rights guaranteed in Section 7 of the Act.

4. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Make whole Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel in the manner set forth in "The remedy" above;

(b) Post at their offices in the Labor Temple at Portland, Oregon, copies of the notice attached hereto and marked Appendix C. Copies of such notice to be furnished by the Regional Director for the Nineteenth Region, after being duly signed by an authorized representative of Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwrights and Machine Erectors Union, Local 1857, chartered by the United Brotherhood of Carpenters and Joiners of America and shall be posted by the said two Respondents named next above immediately upon receipt thereof, and maintained for sixty (60) consecutive days thereafter in conspicuous places, including all places where

notices to its members are customarily posted. Reasonable steps shall be taken by said two last named Respondents to insure that said notices are not altered, defaced, or covered by any other material. Post, or offer to post, similar signed copies of said notice in conspicuous places at Portland, Oregon at the plants and places of business of Respondents Fry, Volney, and St. Johns.

(c) Notify the Regional Director for the Nineteenth Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report, what steps have been taken to comply therewith;

(d) Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., St. Johns Motor Express Company, their officers, agents, successors, and assigns, and Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwrights and Machine Erectors Union, Local No. 1857, chartered by United Brotherhood of Carpenters and Joiners of America, AFL, their officers, representatives, and agents, jointly and severally shall make whole, Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel for any loss of pay of any of the foregoing named employees may have suffered because of the discrimination against him, by payment to him of a sum of money in the manner set forth in "The remedy."

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the date

of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as pro-

vided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 28th day of July, 1949.

/s/ PETER F. WARD,
Trial Examiner.

Appendix A

Memorandum of Agreement

This Agreement, made and entered into this 21st day of Feb., 1947, by and between the firm of Campbell Lowrie Lautermilch Corp. and the Building and Construction Trades Council of Portland and Vicinity, for a period of one (1) year and shall be automatically renewed unless thirty (30) days written notice is given by either party to this agreement.

Witnesseth:

The Employer hereby agrees to employ only workmen in good standing in unions affiliated with the Portland Building and Construction Trades Council, to employ all workmen through the offices of the unions having jurisdiction over the work, to abide by the stipulations governing jurisdiction, working rules, working conditions and hours of employment of all crafts, and to pay the scale of wages of said unions in accordance with their schedule.

There shall be no infringement upon jurisdiction

of work between the craft unions of the Building and Construction Trades Council. The contractors shall at all times be responsible for the acts of their superintendent or foremen.

It is understood as the intention of this agreement that the Building and Construction Trades Council will not work open shop. Contractors not figuring an entire job must notify the Building and Construction Trades Council of same before signing contracts or shall be responsible for all subcontracts.

The Building and Construction Trades Council negotiates wage rates and working conditions yearly with the Portland Home Builders Association and the Associated General Contractors, Building Division. It is expressly agreed that wage rates and working conditions that are negotiated with these two contracting associations are made part of this agreement.

It shall not be considered a violation of this agreement for members of any affiliated craft of the Building and Construction Trades Council to refuse to work on any job for any Employer who has been declared unfair to the Building and Construction Trades Council, or to go through a legitimate picket line.

In consideration of the foregoing, the parties hereto do hereby agree that there shall be no strikes inaugurated by the employees, parties hereto, nor lockouts on the part of the company, party hereto, pending any dispute between investigated and all possible means employed to bring about a peace-

able settlement and adjustment of any and all differences.

Signed for the Company:

CAMPBELL LOWRIE
LAUTERMILCH CORP.,

/s/ R. R. LAUTERMILCH,
Pres.,

400 W. Madison St.,
Chicago, Ill.

Phone Rand. 1606.

Signed for Building and Construction Trades
Council of Portland and Vicinity:

/s/ JOHN O'NEILL,
President.

/s/ FRED MANASH,
Secretary.

Appendix B

Notice to All Employees

Pursuant to

The Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists, or Wilhamette Lodge #63, affiliated with the International Association of Machinists, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be effectuated by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the amended Act.

We Will make whole Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel, in the manner set forth in the Section entitled "The remedy" contained in the Intermediate Report of the Trial Examiner, a copy of which is on file in

the offices of the undersigned and may be inspected by any interested person during office hours.

All our employees are free to become, remain, or refrain from becoming or remaining members of the above-named unions or any other labor organization, except as stated above.

LLOYD A. FRY ROOFING
COMPANY,
(Employer)

By
(Representative) (Title)

VOLNEY FELT MILLS INC.,
(Employer)

By
(Representative) (Title)

ST. JOHNS MOTOR EXPRESS
COMPANY,
(Employer)

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix C

Notice

To All Members of Building and Construction Trades Council of Portland and Vicinity, AFL: Millwrights and Machine Erectors Union, Local No. 1957, chartered by United Brotherhood of Carpenters and Joiners of America, AFL.

Pursuant to

The Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act as amended, we hereby notify our employees that:

We Will Not restrain and coerce employees of Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., and St. Johns Motor Express Company at the Lloyd A. Fry Roofing Company Plant or the Volney Felt Mills, Inc., plant or at the place of business of St. Johns Motor Express Company now located at Portland, Oregon, in the exercise of their rights guaranteed in Section 7 of the Act, including the right to refrain from self-organization and concerted activities and from joining and assisting Building and Construction Trades Council of Portland and Vicinity, AFL. Millwright and Machine Erectors Union, Local No. 1857, Chartered by United Brotherhood of Carpenters and Joiners of America, AFL.

We Will make whole Ray Baker, Fred

Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. L. O'Neel in the manner directed by the Trial Examiner in his Intermediate Report in the Section entitled "The remedy," a copy of which Intermediate Report is on file at the offices of the undersigned and may be inspected by any interested persons during office hours.

**BUILDING AND CONSTRUCTION TRADES
COUNCIL OF PORTLAND AND VICIN-
ITY, AFL,**

(Labor Organization)

By

(Representative) (Title)

**MILLWRIGHTS AND MACHINE ERECTORS
UNION, LOCAL No. 1857, CHARTERED BY
UNITED BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMERICA, AFL,**

(Labor Organization)

By

(Representative) (Title)

Dated

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT

Respondents Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., take exception to the Intermediate Report herein and the Conclusions and Recommendations set forth in said report in the following particulars:

1. Respondents except to the overruling by the Examiner of their motion for dismissal upon the grounds that the Board lacked jurisdiction, and particularly excepts to the Examiner's ruling that respondents were engaged in an industry affecting Interstate Commerce.

(Page 4, lines 10 to 15.)

2. To the failure of the Trial Examiner to find that even if the business of respondent companies did affect commerce it would not effectuate the purpose of the Act to exercise jurisdiction.

3. To the failure of the Trial Examiner to find that even though respondents might be engaged in Interstate Commerce in other operations or even subsequently on the present operation, the work involved at the time and place mentioned in the complaint did not then affect commerce.

4. In finding that a construction project not completed affected commerce.

(Page 5, line 40, to page 6, line 10.)

(Page 16, lines 18 to 24.)

5. In finding that a contract did not exist be-

tween the Building Trades Council of Portland Vicinity and respondents Fry and Volney, and particularly excepts to the Examiner's ruling that the building contractor did not act as agent for respondents Fry and Volney.

(Page 13, lines 25 to 50.)

(Page 14, lines 6 to 10.)

6. In finding that in the event a contract existed between respondents Fry and Volney and the Building Trades Council, the same was invalid for the reason that said Union did not represent an uncoerced majority of the employees at the time the contract was executed.

(Page 14, lines 12 to 49.)

7. In finding that the acts complained of on the part of respondents Fry and Volney were not excusable because of economic pressure, coercion and improper acts on the part of the Building Trades Unions.

(Page 14, line 50 to Page 15, line 11.)

8. To the remedy prescribed by the Trial Examiner as applied to respondents Fry and Volney.

(Page 16, lines 34 to 55.)

9. Respondents also except to the Conclusions of Law set forth in Paragraphs 2, 3, 4 and 5, appearing on page 17 of the Report.

10. Respondents further except to the Trial Examiner's recommendations 1 (a) and 1 (b); 2 (a) and 2 (b) and 4 (d) and particularly excepts to the Examiner's ruling that respondents Fry and

Volney be required to post notices as in said recommendations provided.

Page 17, line 47, to page 18, line 60.)

Respectfully submitted,

/s/ HUGH L. BARZEE,
Attorney for Respondents Lloyd A. Fry Roofing
Company and Volney Felt Mills, Inc.

I certify that I have caused a copy of the foregoing exceptions to be served upon each of the parties to this proceeding through their respective counsel on this 12th day of September, 1949.

/s/ HUGH L. BARZEE,
Attorney.

Received Sept. 19, 1948, N.L.R.B.

[Title of Board and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT AND REQUEST FOR ORAL ARGUMENT

Come now respondents Building and Construction Trades Council of Portland and vicinity and Millwrights and Machine Erectors Union Local No. 1857, and make their exceptions to the intermediate report filed in the above-entitled cases.

Respondents Council and Millwrights at this time make a request for oral argument before the Board.

1. Respondents Council and Millwrights except to the findings of the trial examiner that the Board

has jurisdiction over a construction project, which was the subject matter of the hearing, and particularly except to the ruling that the respondents Fry and Volney and St. Johns were engaged in an industry affecting commerce.

2. Respondents Council and Millwrights except to the failure of the trial examiner to find that, even though the respondents Fry and Volney might be engaged in interstate commerce in other operations or even subsequently on the present project, at the time and place mentioned in the complaint the work involved did not affect commerce.

3. Respondents Council and Millwrights except to the failure of the trial examiner to find that, even if the business of the respondent company did affect commerce, it would not effectuate the purposes of the act to exercise jurisdiction.

4. Respondents Council and Millwrights except to the finding that a construction project not completed affected commerce.

Note: All of the first four exceptions are found beginning on page 5, line 40, and ending on page 6, line 10. of the intermediate report.

5. Respondents Council and Millwrights further except to the finding of the trial examiner (par. IV, page 16) that:

The activities of the Respondents Fry, Volney, and St. Johns, and the Respondents Council and Millwrights set forth in Section III above, occurring in connection with the business

operations of Respondents Fry, Volney, and St. Johns, set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

6. Respondents Council and Millwrights except to the finding that a valid union shop contract did not exist between the Building Trades Council of Portland and vicinity and Fry and Volney (page 11, lines 35 to 39, page 13, lines 25 to 40, and page 14, lines 6 to 10).

7. Respondents Council and Millwrights except to the finding that the contract between Fry and Volney and the Building Trades Council was invalid for the reason that the union did not represent an uncoerced majority of the employees at the time and place the contract was executed (page 14, lines 32 to 42).

8. Respondents Council and Millwrights except to the failure to find that the Building Trades Council represented an uncoerced majority of employees in an area-wide unit, which unit would be comprised of workers involved in the particular project involved in this case.

9. Respondents Council and Millwrights except to the overruling of a motion to dismiss the complaint, for the reasons (page 3, line 46, to page 4, line 8):

a. That sections 8 (b) (1) (a) and (2) of the act as amended were unconstitutional, in that these provisions are in violation of the Fifth and Thirteenth Amendments to the Constitution of the United States.

b. That, inasmuch as the Council and Millwrights had a valid closed shop contract with respondents Fry and Volney which antedated the enactment of the act, as amended, requiring employment of members of the Council and Millwrights, only Fry, Volney and St. Johns were required to dismiss IAM members when employed, on demand.

c. In any event, even if members of the Council and Millwrights were not entitled to replace members on the job here involved, the complaint nevertheless should have been dismissed, since the IAM had likewise engaged in unfair labor practices, and the complaining individuals involved had attained their status by illegal methods and, therefore, had an illegal status and are before the Board with unclean hands.

10. Respondents Council and Millwrights further except to the ruling of the trial examiner in which he struck from the affirmative answer of the respondent Council the defense that the complaining parties (the Machinists) were barred from recovery because of the "unclean hands" doctrine, namely, that these complaining parties had attained their status by illegal methods (Tr., page 11).

11. Respondents Council and Millwrights except to the failure of the trial examiner to state the fact that the respondents Council and Millwrights filed an answer in which as an affirmative defense they set up the "unclean hands" doctrine.

12. Respondents Council and Millwrights except to the failure of the trial examiner to even note in his intermediate report that he had previously stricken a complete defense, namely, the unclean hands doctrine, from the answer of these respondents.

13. Respondents Council and Millwrights except to the conclusion:

Upon the basis of the foregoing, and upon the entire record in the case, the undersigned finds that, by the statements and conduct of Manash as Secretary of Respondents Council and Millwrights by threatening Respondent St. Johns that unless the six machinists employed by it were discharged and replaced by Millwrights the Respondent Council, would as to St. Johns, see to it that Teamsters employed by St. Johns could not deliver material to jobs on which American Federation of Carpenters were employed; by the conduct of the Council on August 29, 1947, citing St. Johns to appear before the Board of Business Representatives of the Council on September 2, 1947, to show cause why the firm of St. Johns should not be placed upon "The Unfair List"; by Manish's statement to St. Johns' Business Manager,

Eggleston, and to Eric Norling, superintendent on behalf of the Building Contractors, that unless the IAM machinists then employed were discharged and replaced by Millwrights all carpenters employed in the building of the felt mill would be pulled off the job, the Respondents Building and Construction Trades Council of Portland and Vicinity and Millwrights and Machine Erectors Union, Local No. 1857, attempted to cause and caused Respondents Lloyd A. Fry Roofing Company and Volney Felt Mills, Inc., to discriminate in regard to the hire or tenure of employment against employees Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel in violation of Section 8 (a) (3) of the Amended Act, and said Respondents Building and Construction Trades Council of Portland and Vicinity and Millwrights and Machine Erectors Union, Local No. 1857, and each of them have restrained and coerced the employees of Respondents Lloyd A. Fry Roofing Company and Volney Felt Mills in the exercise of the rights guaranteed in Section 7 of the Act thereby violating Section 8 (b) (1) (A) and (2) of the Act.

14. Respondents Council and Millwrights further except to the remedy (page 16, line 25) insofar as the remedy affects the respondents Council and Millwrights.

15. Respondents Council and Millwrights fur-

ther except to the trial examiner making conclusions of law, as follows (page 17) :

4. By causing Respondents Fry, Volney, and St. Johns to discriminate against Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel in violation of Section 8 (a) (3) of the Act, thereby restraining and coercing the employees of Respondents Fry, Volney, and St. Johns in the exercise of the rights guaranteed in Section 7 of the Act, the Respondents Council and Millwrights have violated Section 8 (b) (1) and (2) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

15. Respondents Council and Millwrights further except to recommendations 3, 3 (a), 4, 4 (a), 4 (b), 4 (c), and 4 (d), on pages 18 and 19 of the report.

17. Respondents Council and Millwrights further except to the failure to find that sections 8 (b) (1) (A) and (2) of the National Labor Relations Act, as amended, 1947, were and are unconstitutional as violations of the free speech section of the First Amendment to the Constitution of the United States, the due process clause of the Fifth Amendment to the Constitution of the United States, and

the Thirteenth Amendment to the Constitution of the United States.

Respectfully submitted,

GREEN, LANDYE &
RICHARDSON,

Attorneys for Building and Construction Trades
Council of Portland and Vicinity, A. F. of L.,
and Millwrights and Machine Erectors' Union,
Local 1857.

United States of America
Before the National Labor Relations Board

Case No. 36-CA-1

In the Matter of:

LLOYD A. FRY ROOFING COMPANY, VOL-
NEY FELT MILLS, INC., ST. JOHNS
MOTOR EXPRESS COMPANY

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS.

Case No. 36-CB-2

BUILDING AND CONSTRUCTION TRADES
COUNCIL OF PORTLAND AND VICIN-
ITY, AFL: MILLWRIGHTS AND MA-
CHINE ERECTORS' UNION, LOCAL No.
1857, UNITED BROTHERHOOD OF CAR-
PENTERS AND JOINERS OF AMERICA,
AFL,

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS.

DECISION AND ORDER

On July 28, 1949, Trial Examiner Peter F. Ward issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease

and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto.

Thereafter, the Respondents and the General Counsel¹ filed exceptions to the Intermediate Report, and the Respondents filed supporting briefs. The Respondent Unions' request for oral argument is hereby denied because the record and the exceptions and briefs, in our opinion, adequately present the issues and the positions of the parties.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the cases and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

1. We find, as did the Trial Examiner, that the building operations of the Respondent Companies affect commerce and that the policies of the Act will be effectuated by the exercise of our jurisdiction.

The Respondent Companies concede that in the

¹The General Counsel's exceptions are confined to the Trial Examiner's inadvertent failure to state in his "Conclusions" that the Respondent Unions had caused or attempted to cause St. Johns as well as Fry and Volney to discriminate. It may be noted that this error does not appear in the Trial Examiner's formal "Conclusions of Law." 89 NLRB No. 93.

course of their normal operations they are engaged in interstate commerce. However, as the events here involved occurred during the construction of a new plant for Volney and the installation of machinery therein, all the Respondents contend that this activity was purely local in character, and not within the scope of our jurisdiction. We do not agree.

With respect to the installation of machinery, equipment valued in excess of \$150,000 was shipped in interstate commerce, and Respondent St. Johns, Respondents Fry's and Volney's agent² for the installation of machinery, is engaged in this type of work in more than one State. As to the construction of the building itself, the job was done by an out-of-State contractor. Under similar circumstances, we have, in the past, asserted jurisdiction.³

2. We find, as did the Trial Examiner, that by discharging the six machinists on September 2, 1947, the Respondent Companies violated Section 8 (a) (3) and 8 (a) (1) of the Act, and that by causing them to do so the Respondent Unions violated Section 8 (b) (2) of the Act. In further

²We agree with the conclusion of the Trial Examiner that St. Johns, as Fry's and Volney's agent, was an "employer" within the meaning of the amended Act. However, we reject the Trial Examiner's erroneous reliance upon the definition of an "employer" contained in the original Act.

³Daniel Hamm Drayage Company, Inc., 84 NLRB No. 56; Samuel Langer, 82 NLRB 1028, enf. F. 2d (No. 21,365, decided February 24, 1950), (C. A. 2).

agreement with the Trial Examiner we find that the conduct of the Respondent Unions was violative of Section 8 (b) (1) (A) of the Act.

It is admitted that the machinists involved herein were discharged because they were not members of the Respondent Unions. However, the Respondents' principal contention is that, by virtue of documents signed by Lautermilch, the general contractor, on February 21 and March 7, 1947,⁴ a closed shop contract, valid under the original Act, existed between the Respondent Companies and the Respondent Council and constitutes a defense to the discharges.⁵ We find no merit in this contention.

On February 21, 1947, Lautermilch and the Respondent Council entered into a closed shop agreement which by its terms applied exclusively to Lautermilch and to any projects which that con-

⁴At several points in the Intermediate Report, the Trial Examiner refers to an April 21 contract. This is clearly inadvertent. There are no other pertinent documents than the two referred to above.

⁵The Respondent Unions also contend that the machinists who were discharged attained their employee status illegally through the charging Union's operation of a hiring hall. The record indicates clearly, however, that the decision to hire members of one union only was that of Respondents Fry and Volney and was not required by contract with the charging Union. Thus, even were we to concede, which we do not, the applicability of the "unclean hands" doctrine urged by the Respondent Unions, no factual basis for it is presented on this record. Cf. H. M. Newman, 85 NLRB No. 132. Accordingly, we find this contention to be without merit.

tractor might undertake in the Portland area. There is no evidence that this contract was signed on behalf of the Respondent Companies, nor is it seriously urged that this document alone would be binding upon the Respondent Companies.

Thereafter, prompted by the Respondent Council's concern as to the extent of the work that his company would perform on the project involved herein, Lautermilch, on March 7, 1947, addressed a letter to the Council stating that he still did not know whether he would handle the installation of machinery, but adding that he had been assured by the owner that whoever did the work, it would be done on a basis fair to the Council. It is urged that this letter bound Respondents Fry and Volney to the terms of the February 21 contract. However, the letter was signed by Lautermilch alone, and the record fails to show that this general contractor had been authorized in any manner by Respondents Fry and Volney to make such a statement on their behalf. Moreover, as already indicated, the installation of the machinery in question was assigned not to Lautermilch, but to Respondent St. Johns, which had made no commitment to the Council. Under the circumstances, the March 7 statement, couched in the form of a letter from Lautermilch and made without authority of Respondents Fry and Volney, falls far short of a binding agreement by the latter concerns to abide by the closed shop provisions of a

prior contract to which they were clearly not parties.⁶

We therefore find that there was no contract in existence between the Respondent Companies and the Respondent Council which protected the discharges, and that by discharging the machinists the Respondent Companies violated Section 8 (a) (3) and Section 8 (a) (1) of the amended Act.⁷

The Respondent Unions contend that, in any event, the discharges were not caused by any coercion on their part, but only by the Respondent Companies' realization that they were employing members of the charging Union rather than members of the Respondent Unions. We do not agree. The record clearly shows that the Respondent Unions threatened Respondent St. Johns that unless the machinists were discharged and replaced with millwrights, the project would be struck, and that this threat was conveyed by St. Johns to Respondents Fry and Volney who, deciding that they could not afford a work stoppage, effectuated the

⁶Obviously, the discharge of the machinists because of the pressure exerted by the Respondent Unions did not constitute a ratification or adoption by Respondents Fry and Volney of the February 21 contract.

⁷We find it unnecessary to pass upon whether, even assuming that a closed shop contract had existed between the Respondent Council and the Respondent Companies, such a contract, under the circumstances of the instant case, would have constituted a valid defense.

discharges. By thus causing the Respondent Companies to discharge the machinists in violation of Section 8 (a) (3), the Respondent Unions have violated Section 8 (b) (2) and Section 8 (b) (1) (a) of the Act.⁸

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondents Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., St. Johns Motor Express Company, and their officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Discouraging membership in the International Association of Machinists, or in any other labor organization of their employees, or encouraging membership in Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL, or in any other labor organization of their employees, by discharging any of their employees or discriminating in any other manner in regard to their hire or

⁸Clara-Val Packing Company, 87 NLRB No. 120; Union Starch Company, 87 NLRB No. 137.

We do not pass upon whether, by threatening to place St. Johns, a primary employed, upon their unfair list, the Respondent Unions further violated Section 8 (b) (2).

tenure of employment, or any terms or conditions of employment.

(2) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Post at their plants in Portland, Oregon, copies of the notice attached hereto as Appendix A.⁹ Copies of said notice, to be furnished by the Regional Director for the Thirty-sixth Region, shall, after being duly signed by the Respondent Companies' representatives, be posted by them immedi-

⁹In the event this Order is enforced by a United States Court of Appeals, there shall be inserted, before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

ately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Companies to insure that said notices are not altered, defaced, or covered by any other material.

(2) Notify the Regional Director for the Thirty-sixth Region in writing, within ten (10) days from the date of this Order, what steps they have taken to comply therewith.

2. The Respondents Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL, their officers, representatives, and agents, shall:

(a) Cease and desist from:

(1) Causing, by threatening strike action, Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., or St. Johns Motor Express Company, their officers, agents, successors, or assigns, to discharge or otherwise discriminate against employees because they are not members in good standing in Millwrights and Machine Erectors Union, Local 1857, United Brotherhood of Carpenters and Joiners of America, AFL, except in accordance with Section 8 (a) (3) of the Act.

(2) In any other manner causing or attempting to cause Lloyd A. Fry Roofing Company, Volney

Felt Mills, Inc., or St. Johns Motor Express Company, their officers, agents, successors, or assigns, to discriminate against their employees in violation of Section 8 (a) (3) of the Act.

(3) Restraining or coercing employees of Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., or St. Johns Motor Express Company, their successors and assigns, in the exercise of their right to refrain from any or all of the concerted activities guaranteed by Section 7 of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(1) Post at their offices, if any, at Portland, Oregon, and wherever notices to their members are customarily posted, copies of the notice attached hereto as Appendix B.¹⁰ Copies of said notice, to be furnished by the Regional Director for the Thirty-sixth Region, shall, after being duly signed by the Respondent Unions' representatives, be posted by them immediately upon receipt thereof, and be maintained by them for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken

¹⁰In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order" the words, "A Decree of the United States Court of Appeals Enforcing."

by the Respondent Unions to insure that such notices are not altered, defaced, or covered by any other material.

(2) Notify the Regional Director for the Thirty-sixth Region, in writing, within ten (10) days from the date of this Order, what steps they have taken to comply herewith.

3. Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., St. Johns Motor Express Company, their officers, agents, successors, and assigns, and Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwright and Machine Erectors Union, Local 1857, United Brotherhood of Carpenters and Joiners of America, AFL, their officers, representatives, and agents, shall jointly and severally make whole Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel for any loss of pay each may have suffered because of the discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from September 2, 1947, the date he was discriminatorily discharged, to the date of the completion of the installation of machinery at the Respondent Companies' project in Portland, Oregon, less his net earnings during said period.

Signed at Washington, D. C. this 28th day of
April, 1950.

PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

JAMES J. REYNOLDS, Jr.,
Member.

ABE MURDOCK,
Member.

PAUL L. STYLES,
Member.

[Seal]

National Labor Relations Board.

Appendix A

Notice to All Employees
Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not discourage membership in International Association of Machinists, or in any other labor organization, or encourage membership in Millwrights and Machine Erectors Union, Local 1857, United Brotherhood of Carpenters and Joiners of America, AFL, or in any other labor organization, by discriminatorily discharging any of our employees or discriminating in any other manner in regard to their hire or tenure of employment, or any terms or conditions of employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to join or assist International Association of Machinists, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization.

We Will make Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel whole for any loss of pay suffered as a result of the discrimination against them.

All our employees are free to become, remain, or to refrain from becoming or remaining, members in good standing of the above-named unions or any other labor organization, except to the extent that this right may be affected by agreements in conformity with Section 8 (a) (3) of the Act.

Dated:.....

LLOYD A. FRY ROOFING
COMPANY,
(Employer.)

By
(Representative) (Title)

VOLNEY FELT MILLS, INC.,
(Employer.)

By
(Representative) (Title)

ST. JOHNS MOTOR
EXPRESS COMPANY,

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B

Notice

To All Members of Building and Construction Trades Council of Portland and Vicinity, AFL, and of Millwrights and Machine Erectors Union, Local 1857, United Brotherhood of Carpenters and Joiners of America, AFL, and to All Employees of Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., and St. Johns Motor Express Company.

Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not cause, by threatening strike action, Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., or St. Johns Motor Express Company, their officers, agents, successors, and assigns, to discharge or otherwise discriminate against employees because they are not members in good standing of Millwright and Machine Erectors Union, Local 1857, United Brotherhood of Carpenters and Joiners of America, AFL, except in accordance with Section 8 (a) (3) of the Act.

We Will Not in any manner cause or attempt to cause Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., or St. Johns Motor Express Company, their officers, agents, successors, or assigns, to discriminate against any of their employees in violation of Section 8 (a) (3) of the Act.

We Will Not restrain or coerce employees of

Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., or St. Johns Motor Express Company, their successors or assigns in the exercise of the rights to engage in, or to refrain from engaging in, any or all of the concerted activities guaranteed to them by Section 7 of the Act.

We Will make Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel whole for any loss of pay they may have suffered because of the discrimination against them.

Dated:.....

Building and Construction Trades Council of Portland and Vicinity.

By
(Representative) (Title)

Millwrights and Machine Erectors Union, Local 185

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

LLOYD A. FRY ROOFING COMPANY; VOL-
NEY FELT MILLS, INC.; ST. JOHNS MO-
TOR EXPRESS COMPANY; BUILDING
AND CONSTRUCTION TRADES COUNCIL
OF PORTLAND AND VICINITY, AFL,
AND MILLWRIGHTS AND MACHINE
ERECTORS UNION, LOCAL No. 1857;
UNITED BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMERICA, AFL,
Respondents.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 203.87, Rules and Regulations of the National Labor Relations Board-Series 5, as amended (redesignated Section 102.87, 14 F. R. 78), hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, "In the Matter of Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., St. Johns Motor Express Company and International Association of Machinists, Case No. 36-CA-1; Building and Con-

struction Trades Council of Portland and Vicinity, AFL Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL and International Association of Machinists, Case No. 26-CB-2," such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Note: The above-listed respondents are hereinafter referred to as Respondents "Fry," "Volney," "St. Johns," "Building Trades Council," and "Millwrights," respectively.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of charge filed by International Association of Machinists against Respondents "Fry," "Volney," and "St. Johns" on September 22, 1947.

(2) Order designating Peter F. Ward Trial Examiner for the National Labor Relations Board, dated November 9, 1948.

(3) Stenographic transcript of testimony taken before Trial Examiner Ward on November 9 and 10, 1948, together with all exhibits introduced in evidence.

(4) Joint telegram from counsel for Respondent "Building Trades Council," Respondent "Fry," and the International Association of Machinists (charging party before the Board), dated November 19, 1948, requesting extension of time to file briefs with the Trial Examiner.

(5) Copy of Chief Trial Examiner's telegram, dated November 22, 1948, granting all parties extension of time to file briefs.

(6) Telegram from counsel for Respondents "Fry" and "Volney," dated December 11, 1948, requesting further extension of time to file brief with the Trial Examiner.

(7) Copy of Chief Trial Examiner's telegram, dated December 13, 1948, granting all parties further extension of time to file briefs.

(8) Copy of Trial Examiner Ward's Intermediate Report, dated July 28, 1949 (annexed to item 20 hereof); order transferring case to the Board, dated July 28, 1949, together with affidavit of service and United States Post Office return receipts thereof.

(a) Telegram from counsel for Respondents "Building Trades Council and "Millwrights," dated August 3, 1949, requesting extension of time to file exceptions and brief, also extension of time to file request for permission to argue orally before the Board.

(10) Copy of Board's telegram, dated August 4, 1949, granting all parties extension of time for filing exceptions, briefs, and requests for oral argument.

(11) Copy of General Counsel's exceptions to the Intermediate Report, sworn to on September 1, 1949.

(12) Telegram from counsel for Respondents "Fry" and "Volney," dated September 7, 1949, re-

questing further extension of time for filing exceptions and brief.

(13) Telegram from counsel for Respondent "St. Johns," dated September 7, 1949, requesting further extension of time for filing exceptions and brief.

(14) Copy of Board's telegram, dated September 7, 1949, granting all parties further extension of time for filing exceptions and briefs.

(15) Joint telegram from counsel for Respondents "Fry," "Volney," and "St. Johns," dated September 8, 1949, requesting still further extension of time for filing exceptions and briefs.

(16) Copy of Board's telegram, dated September 8, 1949, denying Respondents' request for extension of time for filing exceptions, but granting all parties still further extension of time for filing briefs.

(17) Copy of exceptions of Respondents "Building Trades Council" and "Millwrights" to the Intermediate Report and request for oral argument received September 19, 1949. (Request for oral argument denied in Board's Decision and Order of April 28, 1950, page 1.)

(18) Copy of exceptions of Respondents "Fry" and "Volney" to the Intermediate Report, received September 19, 1949.

(19) Copy of exceptions of Respondent "St. Johns" to the Intermediate Report, received September 20, 1949.

(20) Copy of Decision and Order issued by the National Labor Relations Board on April 28, 1950, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 15th day of December, 1950.

/s/ FRANK M. KLEILLER,
Executive Secretary.

[Seal] NATIONAL LABOR
RELATIONS BOARD.

[Endorsed]: No. 12775. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Lloyd A. Fry Roofing Co.; Volney Felt Mills, Inc.; St. Johns' Motor Express Co.; Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL, Respondents. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed December 18, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12775

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

LLOYD A. FRY ROOFING CO.; VOLNEY
FELT MILLS, INC.; ST. JOHNS' MOTOR
EXPRESS CO.; BUILDING AND CON-
STRUCTION TRADES COUNCIL OF
PORTLAND AND VICINITY, AFL; AND
MILLWRIGHTS AND MACHINE EREC-
TORS UNION, LOCAL No. 1857, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL,

Respondents.

STATEMENT OF POINTS RELIED
UPON BY THE BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board,
the petitioner herein, and, in conformity with the
rules of this Court, files this statement of points
upon which it intends to rely in the above-entitled
proceeding:

1. The Board properly determined that it had
jurisdiction over the unfair labor practices of the
respondent companies and respondent unions re-
ferred to in the following paragraph.

2. The Board's findings that respondent companies engaged in unfair labor practices within the meaning of Sections 8(a) (3) and 8(a) (1) of the Act by discharging six employees because of their membership in the International Association of Machinists, and that respondent unions engaged in unfair labor practices within the meaning of Section 8(b) (2) and 8(b) (1) (A) of the Act by causing the respondent companies to discharge these employees are supported by substantial evidence.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 15th day of December, 1950.

[Endorsed]: Filed Dec. 18, 1950 U.S.C.A.

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

LLOYD A. FRY ROOFING COMPANY; VOL-
NEY FELT MILLS, INC.; ST. JOHNS'
MOTOR EXPRESS COMPANY; BUILD-
ING AND CONSTRUCTION TRADES
COUNCIL OF PORTLAND AND VICIN-
ITY, AFL; AND MILLWRIGHTS AND
MACHINE ERECTORS UNION, LOCAL
NO. 1857, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMER-
ICA, AFL,

Respondents.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to
the National Labor Relations Act, as amended (61
Stat. 136, 29 U.S.C., Supp. III, Secs. 151 et seq.),
hereinafter called the Act, respectfully petitions this
Court for the enforcement of its order against Re-
spondents Lloyd A Fry Roofing Company, Volney
Felt Mills, Inc., St. Johns Motor Express Company,
and their officers, agents, successors, and assigns,

and Respondents Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL, their officers, representatives, and agents. The consolidated proceeding resulting in said order is known upon the records of the Board as "In the Matter of Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., St. Johns Motor Express Company and International Association of Machinists, Case No. 36-CA-1; Building and Construction Trades Council of Portland and Vicinity, AFL; Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL and International Association of Machinists, Case No. 26-CB-2."

In support of this petition, the Board respectfully shows:

(1) Respondent Companies are engaged in business in the State of Oregon, and Respondent Unions are labor organizations engaged in promoting and protecting the interests of their members in the State of Oregon, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with

this Court herein, to which reference is hereby made, the Board on April 28, 1950, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent Companies, and their officers, agents, successors, and assigns, and the Respondent Unions, their officers, representatives, and agents. The aforesaid order provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondents Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., St. Johns Motor Express Company, and their officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Discouraging membership in the International Association of Machinists, or in any other labor organization of their employees, or encouraging membership in Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL, or in any other labor organization of their employees, by discharging any of their employees or discriminating in any other manner in regard to their hire or tenure of employment, or any terms or conditions of employment;

(2) In any other manner interfering with,

restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, or any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Post at their plants in Portland, Oregon, copies of the notice attached hereto as Appendix A.⁹ Copies of said notice, to be furnished by the Regional Director for the Thirty-sixth Region, shall, after being duly signed by the Respondent Companies' representatives, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to em-

⁹In the event this Order is enforced by a United States Court of Appeals, there shall be inserted, before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

ployees are customarily posted. Reasonable steps shall be taken by the Respondent Companies to insure that said notices are not altered, defaced, or covered by any other material.

(2) Notify the Regional Director for the Thirty-sixth Region in writing, within ten (10) days from the date of this Order, what steps they have taken to comply therewith.

2. The Respondents Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL, their officers, representatives, and agents, shall:

(a) Cease and desist from:

(1) Causing, by threatening strike action, Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., or St. Johns Motor Express Company, their officers, agents, successors, or assigns, to discharge or otherwise discriminate against employees because they are not members in good standing in Millwrights and Machine Erectors Union, Local 1857, United Brotherhood of Carpenters and Joiners of America, AFL, except in accordance with Section 8 (a) (3) of the Act.

(2) In any other manner causing or attempting to cause Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., or St. Johns Motor Express Company, their officers, agents,

successors, or assigns, to discriminate against their employees in violation of Section 8 (a) (3) of the Act.

(3) Restraining or coercing employees of Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., or St. Johns Motor Express Company, their successors and assigns, in the exercise of their right to refrain from any or all of the concerted activities guaranteed by Section 7 of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Post at their offices, if any, at Portland, Oregon, and wherever notices to their members are customarily posted, copies of the notice attached hereto as Appendix B.¹⁰ Copies of said notice, to be furnished by the Regional Director for the Thirty-sixth Region, shall, after being duly signed by the Respondent Unions' representatives, be posted by them immediately upon receipt thereof, and be maintained by them for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken by the Respondent Unions to insure that such notices are not

¹⁰In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order" the words, "A Decree of the United States Court of Appeals Enforcing."

altered, defaced, or covered by any other material.

(2) Notify the Regional Director for the Thirty-sixth Region, in writing, within ten (10) days from the date of this Order, what steps they have taken to comply herewith.

3. Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., St. Johns Motor Express Company, their officers, agents, successors, and assigns, and Building and Construction Trades Council of Portland and Vicinity, AFL, and Millwright and Machine Erectors Union, Local 1857, United Brotherhood of Carpenters and Joiners of America, AFL, their officers, representatives, and agents, shall jointly and severally make whole Ray Baker, Fred Bolton, William Bozarth, D. F. Donnelly, John L. Kesch, and J. R. O'Neel for any loss of pay each may have suffered because of the discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from September 2, 1947, the date he was discriminatorily discharged, to the date of the completion of the installation of machinery at the Respondent Companies' project in Portland, Oregon, less his net earnings during said period.

(3) On April 28, 1950, the Board's Decision and Order was served upon Respondents by sending

copies thereof postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondents to comply therewith.

NATIONAL LABOR
RELATIONS BOARD,

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C., this 15th day of December, 1950.

[Appendix A and B—see pages 206 to 209 of this printed record.]

[Endorsed]: Filed Dec. 18, 1950. U.S.C.A.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

Comes now Lloyd A. Fry Roofing Company, a corporation, and Volney Felt Mills, Inc., a corporation, of Respondents, and for answer to the petition of the National Labor Relations Board herein for enforcement of its order, admit, deny and allege as follows:

I.

Admit the allegations contained in Petitioner's Paragraph (1) except that said Respondents deny that they committed any unfair labor practices in the State of Oregon and within the judicial circuit of the above-entitled Court or elsewhere.

II.

Admit the allegations contained in Paragraphs (2), (3), and (4) of said petition.

And for a further, separate and affirmative defense to said petition, said answering Respondents allege as follows:

I.

The Petitioner did not have jurisdiction over said Respondents for the reason that its findings in respect to the following matters were not supported by substantial evidence:

(1) That the construction project in which Respondents were engaged affected commerce;

(2) That the policies of the National Labor Relations Act would be effectuated by exercise of jurisdiction by Petitioner.

II.

The following further findings of Petitioner are not supported by substantial evidence:

(1) That Respondents violated Section 8 (a) (3) of the National Labor Relations Act in acquiescing in the discharge of six employees on the 2nd day of September, 1947;

(2) That a valid closed shop contract did not exist between Respondent and Respondent Unions;

(3) That Respondent Unions did not represent an uncoerced majority of the employees at the time of the execution of said contract;

(4) That the acts complained of were not excusable because of economic pressure, coercion and illegal acts on the part of Respondent Unions.

III.

The following conclusions of law of the Petitioner are not based upon a preponderance of the evidence: (1) That Respondents discriminated in regard to the hire and tenure and terms and conditions of employment of the six employees above mentioned and thereby engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the National Labor Relations Act;

(2) That by reason of the alleged conduct above mentioned, said Respondents infringed upon the rights of said employees as guaranteed under Section 7 of the Act and thereby engaged in unfair labor practices.

(3) That said alleged unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

IV.

Respondents further allege that at the time of the commission of said alleged unfair labor practices, said Respondents were engaged in the erection of a building which was a local construction project completed in January, 1948, and that by reason of said facts, it should be determined upon analysis of Petitioner's order that the same is not reasonably designed to effectuate the policies of the Act, and particularly, that said Respondents should not be required to post notices as recommended therein.

Wherefore, having fully answered Petitioner's petition, the Respondent Companies above named pray that the same be dismissed.

/s/ HUGH L. BARZEE,

Attorney for Respondents Lloyd A. Fry Roofing
Company and Volney Felt Mills, Inc.

State of Oregon,
County of Multnomah—ss.

I, B. B. Alexander, being first duly sworn, say that I am the manager at Portland, Oregon, of

Lloyd A. Fry Roofing Company, a corporation, and Volney Felt Mills, Inc., a corporation, the above-named Respondents; that I have read the foregoing Answer to Petition for Enforcement of an Order of the National Labor Relations Board and the same is true as I verily believe.

/s/ B. B. ALEXANDER.

Subscribed and sworn to before me this 8th day of February, 1951.

[Seal] /s/ L. H. BARZEE,

Notary Public for Oregon.

My commission expires Sept. 28, 1951.

[Endorsed]: Filed Feb. 12, 1951. U.S.C.A.

[Title of Court of Appeals and Cause.]

ANSWER TO THE PETITIONER'S PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Come now the Building and Construction Trades Council of Portland and Vicinity, AFL; and Millwrights and Machine Erectors Union, Local No. 1857, United Brotherhood of Carpenters and Joiners of America, AFL, and for answer to the petitioner's petition for enforcement of an Order of the National Labor Relations Board, admit, deny and allege:

I.

Admit all of the allegations contained in petitioner's Paragraph (1) except that these respondent unions deny that an unfair labor practice occurred in the State of Oregon and within this Judicial circuit.

II.

Admit all of the allegations contained in petitioner's Paragraph (2), (3) and (4).

For a further separate answer and affirmative defense, these respondent unions allege:

I.

That the findings of the National Labor Relations Board in this proceeding that the building operations of the respondent companies affected commerce and that the policies of the National Labor Relations Act would be effectuated by the exercise of the board's jurisdiction is not supported by substantial evidence and that, therefore, the Board did not have jurisdiction over the alleged unfair labor practice of the respondent companies and respondent unions.

For a further second separate affirmative answer and defense, respondent unions allege:

I.

That the findings of the National Labor Relations Board that these respondent unions violated Section 8 (b) (1) (A) of the National Labor Relations Act

in causing the discharge of six employees of the above-named respondent companies on September 2, 1947, is not supported by substantial evidence and that the said discharge by the respondent companies was made pursuant to a valid contract which was in existence between the above-named respondent companies and these answering respondent unions.

For a third separate affirmative answer and defense, respondent unions allege:

I.

That the said employees mentioned in the petitioner's petition were members of the International Association of Machinists, Local No. 63, and that said Local 63 had at all times herein referred to entered into a contract with the respondent St. Johns Motor Express Company whereby it was agreed that the respondent employer St. Johns Motor Express Company would employ exclusively members of the machinists' Local No. 63 to perform the work referred to in the complaint brought by the petitioner in this proceeding and that this said agreement was in direct violation of the National Labor Relations Act, Sections 8-A (1), (3), 8-B (1), (2) and that the said employees referred to in petitioner's petition all were employed and maintained their employment with said respondent, St. Johns Motor Express Company, solely and by virtue of their membership in said International Association of Machinists Local No. 63, and that by

virtue of these illegal acts, methods, practices and agreements, which said employees consented to, that they were not entitled to any relief before the National Labor Relations Board and that they are not entitled nor can they obtain any relief of any kind or description in this proceeding.

And for a fourth further separate affirmative answer and defense, respondent unions allege:

I.

That Sections 8-B(1) and 8-B(2) of the National Labor Relations Act of 1947 as amended violate the first amendment to the Constitution of the United States and also violate the fifth amendment to the Constitution of the United States and, are, therefore, unconstitutional and unenforceable.

And for a fifth further separate affirmative answer and defense, respondent unions allege:

I.

That at the time of the commission of said alleged unfair labor practices, said respondent unions were engaged in the erection of a building which was a local construction project completed in January, 1948, and that by reason of said facts, it should be determined upon analysis of petitioner's order that the same is not reasonably designed to effectuate the policies of the Act, and particularly, that said respondent unions should not be required to post notices as recommended therein.

Wherefore, having fully answered petitioner's

petition, respondent unions pray that the same be dismissed.

GREEN, LANDYE AND RICHARDSON, BURL
L. GREEN AND J. ROBERT PATTERSON,

/s/ J. ROBERT PATTERSON,
Attorneys for Respondent
Unions.

[Endorsed]: Filed Feb. 12, 1951. U.S.C.A.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCE-
MENT OF AN ORDER OF THE NA-
TIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Come now St. Johns Motor Express Company, a corporation, and for answer to the petition of the National Labor Relations Board for enforcement of its order, admits, denies and alleges as follows:

I.

Admits the allegations contained in petitioner's Paragraph (1) except that respondent, St. Johns Motor Express Company, denies that it committed any unfair labor practices within the State of Oregon and this judicial circuit.

II.

Admits all the allegations contained in Paragraphs 2, 3, and 4 of petition of the petitioner.

For a further separate and affirmative defense said respondent alleges as follows:

I.

The petitioner lacked jurisdiction over said respondent for the reason that the findings were not supported by substantial evidence in the following particulars:

(1) That the construction of the building by the respondent companies did involve commerce within the meaning of the National Labor Relations Act;

(2) That the policies of said act would be effectuated by exercise of jurisdiction by the National Labor Relations Board.

II.

The further findings of the petitioner are not supported by substantial evidence:

(1) That a legal closed shop contract did not exist between respondent, St. Johns Motor Express Company, and respondent unions.

(2) That respondent, St. Johns Motor Express Company violated Section 8 (a) (3) of the National Labor Relations Act in discharging six employees on September 2, 1947, in accordance with the specific instructions of respondents, Lloyd A.

Fry Roofing Company and Volney Felt Mills, Inc., as the agent of said respondents.

(3) That the acts of the St. Johns Motor Express Company complained of were not excusable because of the illegal acts by the respondent unions.

III.

The petitioner failed to present a preponderance of the evidence in support of the following conclusions of law:

(1) That by the discharge of six employees the respondent discriminated in regard to the hire and tenure and terms and conditions of employment for such employees and thereby committed an unfair labor practice within the meaning of Section 8 (a) (3) of the National Labor Relations Act.

(2) That such conduct above was also a violation of Section 7 of the National Labor Relations Act.

(3) That such acts of said respondent were also unfair labor practices under Section 2 (6) and (7) of said Act.

IV.

That since the petitioner has failed to establish its findings and conclusions of law above mentioned the respondent, St. Johns Motor Express Company should not be required to post notices to all employees as recommended by the petitioner.

Wherefore, having fully answered petitioner's

petition the respondent company prays that the same be dismissed.

/s/ WILFORD O. LONG,
Of Attorneys for Respondent
St. Johns Motor Express
Company.

Dated at Portland, Oregon, this 21st day of February, 1951.

[Endorsed]: Filed Feb. 26, 1951. U.S.C.A.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

CA 9 No. 12775

United States of America—ss.

The President of the United States of America

To: International Association of Machinists, 1411
4th Ave. Building, Seattle, Washington,

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 18th day of December, 1950, a petition of the National Labor Relations Board for enforcement of its order entered on April 28, 1950, in a proceeding known upon the records of the said Board as "In the Matter of Lloyd A. Fry Roofing Co., Volney Felt Mills, Inc., St. Johns Motor Express Co., and In-

ternational Ass'n of Machinists, Case No. 36-CA-1 and Building and Construction Trades Council of Portland & Vicinity, AFL; Millwrights & Machine Erectors' Union, Local No. 1857, United Brotherhood of Carpenters & Joiners of America, AFL, and International Ass'n of Machinists, Case No. 36-CB-2," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 18th day of December in the year of our Lord one thousand, nine hundred and fifty.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Return on Service of Writ attached.

[Endorsed]: Filed Jan. 11, 1951, U.S.C.A.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

CA 9 12775

United States of America—ss.

The President of the United States of America

To: Lloyd A. Fry Roofing Co., and Volney Felt Mills, Inc., 3750 N.W. Yeon, Portland, Oregon; St. Johns Motor Express Company, 722 North Burlington, Portland, Oregon; Building & Construction Trades Council of Portland, 410 Labor Temple, Portland, Oregon; Millwrights and Machine Erectors Local 1857, AFL, Labor Temple, Portland, Oregon,

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 18th day of December, 1950, a petition of the National Labor Relations Board for enforcement of its order entered on April 28, 1950, in the proceeding known upon the records of the said Board as "In the Matter of Lloyd A. Fry Roofing Company, Volney Felt Mills, Inc., St. Johns Motor Express Company and International Association of Machinists, Case No. 36-CA-1 and Building and Construction Trades Council of Portland Vicinity, AFL; Millwrights and Machine Erectors' Union, Local No. 1857, United Brotherhood of Carpenters & Joiners of America, AFL, and Int. Ass'n of Machinists, Case

No. 36-CB-2," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 18th day of December in the year of our Lord one thousand, nine hundred and fifty.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

Returns on Service of Writs attached.

[Endorsed]: Filed Jan. 8, 1951, U.S.C.A.

ORDER TO SHOW CAUSE

[An Order to Show Cause similar to the foregoing was issued addressed to the International Association of Machinists, 1411-4th Ave. Bldg., Seattle, Washington.]

Return on Service of Writ attached.

[Endorsed]: Filed Jan. 11, 1951, U.S.C.A.